

ORIGINAL

McDEVITT & MILLER, LLP
Dean J. Miller (ISB No. 1968)
420 West Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702
Phone (208) 343-7500
Facsimile (208) 336-6912
joe@mcdevitt-miller.com

RECEIVED
FILED
2004 JAN 23 PM 3: 36
IDAHO PUBLIC
UTILITIES COMMISSION

BRIGGS AND MORGAN, P.A.
Philip R. Schenkenberg (MN #260551)
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Phone (651) 808-6600
Facsimile (651) 808-6450
pschenkenberg@briggs.com

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' POST-HEARING BRIEF IN SUPPORT OF
APPLICATION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners" or the "Company"), submits this post-hearing brief in support of its Application for designation as a federal eligible telecommunications carrier ("ETC").

I. INTRODUCTION

The fundamental question presented by this proceeding is whether the Idaho Public Utilities Commission ("Commission") will effectuate the requirements of the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* (the "Act") and establish competitive local telecommunications markets in which new entrants, including a commercial mobile radio services ("CMRS") provider, can be eligible to receive universal service funds to meet the telecommunications needs of Idaho consumers. Consistent with federal and state law, the Commission should designate Nextel Partners as an ETC in the state of Idaho, and reject attempts to protect the interests of monopoly local exchange carriers ("LECs") to the ultimate detriment of Idaho consumers. Designating Nextel Partners as an ETC is consistent with the statutory mandates of Section 214(e) of the Act, the directives of the Federal Communications Commission ("FCC"), and the interests of the public.

The record evidence establishes that Nextel Partners satisfies all Section 214(e)(1) requirements for designation, and that designation of Nextel Partners as an additional ETC is in the public interest as required by 47 U.S.C. § 214(e)(2). For the one rural telephone company study area that the Company cannot wholly serve, *i.e.*, Citizens Telecommunications Company of Idaho ("Citizens"), the record evidence supports designation on an exchange basis, rather than through the study area. Accordingly, the Commission should unconditionally designate Nextel Partners as an ETC in the rural telephone company study areas it can wholly serve, and conditionally designate Nextel Partners as an ETC in the requested Citizens exchanges.

II. NEXTEL PARTNERS' APPLICATION

This matter commenced on April 28, 2003, when Nextel Partners filed an Application to be designated as a federal ETC in certain areas of the state of Idaho. The Application describes and demonstrates Nextel Partners' satisfaction of the ETC criteria and documents the Company's

requested ETC service areas based on its licensed service areas and current coverage maps. Nextel Partners sought designation in four rural telephone company study areas, and designation in certain Citizens exchanges. Tr. 34.¹ The Company sought designation only for the receipt of federal universal service funds, and did not request ETC status for purposes of receiving support from the Idaho Universal Service Fund under Idaho Code § 62-610, *et seq.* The Commission consolidated Nextel Partners' Application with the application of IAT Communications, Inc. ("Clear Talk"). Citizens and the Idaho Telephone Association ("ITA") (collectively, "Intervenors") intervened and opposed the applications.

Nextel Partners offers commercial mobile radio services ("CMRS") pursuant to licenses issued by the FCC. These licenses cover a vast portion of central and southern Idaho, and other small and rural markets throughout the nation. Tr. 10. Its corporate parent is Nextel Partners, Inc., a publicly held corporation that in just a few years has built out its network extensively through its subsidiaries, and now serves more than 1,000,000 subscribers nationwide under the "NEXTEL" brand name. Tr. 10. Nextel Partners should not be confused with Nextel Communications, Inc. ("Nextel Communications"), a distinctly different corporation that provides NEXTEL brand services in urban areas. The corporations are separately traded, and each has its own board of directors and executive officers. *Id.* Collectively, Nextel Partners and Nextel Communications provide NEXTEL brand service in areas of the United States populated by approximately 240 million people. *Id.*

As a provider in small and rural markets, Nextel Partners has made a commitment to be a universal service provider throughout its service areas. It has filed applications to be designated

¹ Citations to the hearing transcript will be referred to as "Tr."

as an ETC in more than 15 states, and has already been designated an ETC in the states of Wisconsin, Mississippi, Iowa and Arkansas.²

III. BACKGROUND OF INTERVENING ILECS

ITA is a group of rural telephone companies serving 40,000 total access lines in rural Idaho. Tr. 485. Each ITA company has been designated as an ETC, and is in fact the only ETC in its service area. Tr. 544. These companies support the competitive principles in the Act,³ but opposed the Nextel Partners and Clear Talk applications.

Citizens serves approximately 21,000 access lines in Idaho. Tr. 485. Like the ITA companies, Citizens is the only ETC in its Idaho service areas. Tr. 605. At the national level, Citizens is among the ten largest LECs in the country and serves over 2,000,000 access lines. Tr. 605. Citizens receives more than \$7 million each year in federal universal support for its Idaho lines, and receives over \$130,000,000 nationwide. Citizens also supports competition and the goals of the Act generally,⁴ but nonetheless claimed it is too small to compete in the universal service market. Tr. 605. Citizens took this position even though current ILEC funding levels will not be affected by competitive ETCs at least until 2006. Tr. 220, 606.

² *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8081-TI-101, Final Decision (Sept. 30, 2003) ("*Nextel Partners Wisconsin Order*") (Ex. 108); *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Miss. Pub. Svc. Comm'n Docket No. 03-UA-0256, Order (Sept. 29, 2003) (Ex. 109); *In re: NPCR, Inc. d/b/a Nextel Partners*, Iowa Utils. Bd., Docket No. 199 IAC 39.2(4), Order Designating Eligible Carrier (May 15, 2003); *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as Amended*, Arkansas PSC Docket No. 03-141-CL, Order No. 4 (Dec. 22, 2003) (attached hereto as Exhibit 111).

³ Mr. Trampush agreed that "Congress made a decision to bring competition to all areas because competitive markets generally benefit consumers." Tr. 547.

⁴ Mr. Tade testified that "[t]he most effective way to promote economic efficiency in competitive markets is to allow competitive market forces to entice and discipline the behavior of firms. Effective competition requires that all firms must compete on the merits of their respective efficiencies." Tr. 586-87.

IV. BACKGROUND OF FEDERAL UNIVERSAL SERVICE MECHANISMS

In the Act, Congress directed the FCC and states to act jointly to establish support mechanisms to ensure the delivery of basic telecommunications services to all Americans. 47 U.S.C. § 254(a)(1). Prior to the Act, the states and the federal government attempted to facilitate telecommunications services in rural areas through implicit subsidies designed to benefit incumbent LECs, such as excessive access charges, provisioning of non-competitive services at above-cost rates and state geographically averaged rates. By establishing universal service support mechanisms under the Act, Congress moved away from implicit subsidies, with explicit federal and state subsidies then available to the ETC.⁵ This would allow competition to drive costs and prices down in all telephone markets.

Through the Act, Congress directed the FCC and states to establish specific, predictable and sufficient support mechanisms for universal service. *See* 47 U.S.C. § 254(d). The FCC has put in place funding mechanisms that provide for sufficient and predictable funding in high cost areas, and continues to seek guidance from the Joint Board on how these funding mechanisms can be improved to achieve the Act's goals. As part of this process, the FCC adopted a five-year plan in 2001 that assures rural telephone companies will not lose federal universal service support – even if they lose customers – through 2006. This transition period allows competitive universal service to develop in rural company areas:

We conclude that the plan we adopt today will preserve and advance universal service, consistent with the goals and principles set forth in section 254 of the Act, and encourage competition in high-cost areas, consistent with the competitive goals of the 1996 Act. In particular, we find that adoption of the modified embedded cost mechanism is consistent with our obligation to ensure that the support provided to rural carriers over the next five years is specific, predictable,

⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶¶ 17-19 (rel. May 8, 1997) ("*Universal Service Order*"); *In the Matter of Federal-State Joint Commission on Universal Service*, CC Docket No. 96-45, Seventh Report and Order, FCC 99-119, ¶ 30 (rel. May 28, 1999) ("*Seventh Report and Order*").

and sufficient. In addition, we find that the mechanism is consistent with the goals of section 254 to ensure that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are affordable and reasonably comparable to rates charged for similar services in urban areas. We find further that the flexible plan for disaggregating and targeting support adopted in this Order will facilitate competitive entry into high-cost areas, bringing the benefits of competition to consumers in rural areas.⁶

Now that these mechanisms are in place, it is up to this Commission to ensure that they will be utilized to provide benefits to consumers in high cost, rural areas of Idaho.

Granting ETC designation does not in and of itself mean Nextel Partners will receive federal subsidies. Instead, once designated, "a carrier's continuing status as an [ETC] is contingent upon continued compliance with the requirements of Section 214(e) and only an eligible carrier that succeeds in attracting and/or maintaining a customer base to whom it provides universal service will receive universal service support."⁷ In addition, Nextel Partners' ability to receive support from the federal fund will not completely level the playing field with incumbent LECs because the LECs will continue to receive subsidies not available to Nextel Partners. It will, however, prompt competition in the universal service market and is the first step in allowing Idaho consumers the benefits envisioned by the Act.

Both the Act and the *Universal Service Order* establish the requirements for a carrier to be designated an ETC. Section 214(e)(1) requires a carrier to be a common carrier; provide a base set of supported services established by the FCC in 47 C.F.R. § 54.101(a); advertise the availability of the services and charges; provide the supported services throughout a designated service area; and in areas served by rural telephone companies, demonstrate that designation of an additional ETC is in the public interest. 47 U.S.C. § 214(e)(1)-(2).

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Fourteenth Report and Order, FCC 01-157, ¶ 10 (rel. May 23, 2001) ("*Fourteenth Report and Order*") (emphasis added). Mr. Wood discussed these mechanisms at length in his testimony.

⁷ *Universal Service Order*, ¶ 138.

V. NEXTEL PARTNERS SATISFIES THE ELIGIBILITY CRITERIA OF 47 U.S.C. § 214(e)(1)

The record evidence establishes that Nextel Partners meets all criteria for ETC designation contained in Section 214(e)(1). Those criteria are discussed below with reference to the record evidence.

A. Nextel Partners is a Common Carrier

The first requirement for ETC designation is status as a common carrier under federal law. Nextel Partners is a "telecommunications carrier" as defined in 47 U.S.C. § 153(49), and is authorized by the FCC to provide CMRS in those portions of Idaho identified on Exhibit 106. Its current network coverage is shown on Exhibits 103 and 104. A "common carrier" is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. The FCC's regulations specifically provide that a specialized mobile radio service, like that provided by Nextel Partners, is a common carrier service. *See* 47 C.F.R. § 20.9(a)(4). Nextel Partners is therefore a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1). The testimony in this regard is undisputed. Tr. 9, 545.

B. Nextel Partners Provides Each of the FCC's Supported Services

The record confirms that Nextel Partners can provide each of the supported services required of an ETC under 47 C.F.R. § 54.101(a), and will offer those services to its universal service customers once designated an ETC. Tr. 20-27. Nextel Partners introduced clear evidence that it has existing wireless facilities and sufficient capacity to provide the supported services in the areas for which it seeks designation. Tr. 20-21. Each of these federal universal services is discussed more fully below.

1. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make

and receive phone calls within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone companies, all Idaho customers of Nextel Partners are able to make and receive calls on the public switched network within the FCC's specified bandwidth. Tr. 22.

2. Local usage. An ETC must include an amount of free local usage determined by the FCC as part of a universal service offering. 47 C.F.R. § 54.101(a)(2). The FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has declined to require that ETCs offer unlimited local usage.⁸ Nextel Partners can and will include local usage in its universal service offerings. Tr. 22.
3. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Carriers that provide signaling that is functionally equivalent to DTMF meet this requirement. 47 C.F.R. § 54.101(a)(3). Nextel Partners uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. Tr. 23.
4. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4); *Universal Service Order*, ¶ 62. Nextel Partners meets this requirement by providing a dedicated message path for the length of all customer calls. Tr. 24.
5. Access to emergency services. The ability to reach a public safety answering point ("PSAP") by dialing 911 is a required service. Enhanced 911, or "E911," is only required if a PSAP is capable of receiving and utilizing such information, and requests the delivery of such information from a wireless provider. *Universal Service Order*, ¶¶ 72-73. Nextel Partners currently provides its customers with access to emergency services by dialing 911 in satisfaction of this requirement. Tr. 24. Nextel Partners has deployed Phase I and Phase II E911 as requested in Ada County. Nextel Partners will continue to implement Phase I and Phase II E911 requests in accordance with FCC rules. *Id.*
6. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to

⁸ *In The Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*").

arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6); *Universal Service Order*, ¶ 75. Nextel Partners demonstrated it meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities (e.g. LECs, IXC, etc.). Tr. 25-26.

7. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47 C.F.R. § 54.101(a)(7). Nextel Partners meets this requirement by providing its customers the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers. Tr. 26.
8. Access to directory assistance. The ability to place a call directly to directory assistance is a required service offering. 47 C.F.R. § 54.101(a)(8). Nextel Partners meets this requirement by providing all of its customers with access to directory assistance by dialing "411." Tr. 26.
9. Toll limitation for qualifying low income consumers. An ETC must offer either "toll control" or "toll blocking" services to qualifying Lifeline customers at no charge. Nextel Partners is unable to provide toll control at this time. However, The record evidence establishes that the Company is fully capable of providing toll blocking and that it can and will provide the service to its Lifeline and Link Up customers, at no charge, as part of its universal service offerings. Tr. 26-27.

Intervenor witness Mr. Trampush agreed that Nextel Partners can provide these nine supported services:

Q: Do you take issue with Nextel Partners' statements that it is able to provide the nine supported services?

A: In the areas they've requested, I believe they can.

Tr. 546.

In addition, the Commission has already found that Clear Talk – a CMRS provider like Nextel Partners – provides these supported services.⁹ The Commission should enter an order

⁹ *In the Matter of the Petition of IAT Communications, Inc. d/b/a NTCH-Idaho, Inc. or ClearTalk for Designation as an Eligible Telecommunications Carrier*, Idaho PUC Docket No. GNR-T-03-8, Order No. 29261 (June 11, 2003).

that Nextel Partners demonstrated an intent and ability to provide the supported services upon designation.¹⁰

C. Nextel Partners Will Satisfy Advertising Requirements

The third requirement for ETC designation is that a carrier agree to advertise the availability and charges for the supported services using media of general distribution. 47 U.S.C. § 214(e)(1). To date, neither the FCC nor the Commission has adopted any specific advertising guidelines for any ETC.¹¹ Nextel Partners has committed to advertising in media of general distribution, including in newspapers and magazines and on radio and television, in accordance with the federal law, and provided the outline for an advertising plan. Tr. 32-33 & Exhibit 105. Intervenors offered no evidence suggesting any deficiency in Nextel Partners' plan or commitment to advertise its universal service offerings. Thus, the Commission should properly conclude that Nextel Partners satisfies the advertising requirement under Section 214(e)(1).

D. Nextel Partners Will Participate in Lifeline and Link Up

Federal law requires all ETCs to participate in federal Lifeline and Link Up programs, which support the provision of universal service to low-income customers. The rules governing Lifeline and Link Up are set forth within 47 C.F.R. §§ 51.400 - 54.415. In its Application, Nextel Partners acknowledged and undertook these obligations. Application, ¶ 10(i). Mr. Peabody further discussed these programs in his testimony. Tr. 26-27. The Commission should find Nextel Partners will participate in the Lifeline and Link Up programs in compliance with FCC rules as is required of all ETCs.

¹⁰ Citizens had earlier suggested that Nextel Partners would be required to provide unlimited local usage. Tr. 592. While Nextel Partners does have one plan that includes unlimited usage (Tr. 64), the FCC has recently confirmed that "unlimited local usage should not be added to the list of supported services." *July 2003 Order*, ¶ 14.

¹¹ *Universal Service Order*, ¶ 148.

E. Nextel Partners Provides the Required Services Using its Own Facilities

An ETC must offer the required services using its own facilities or a combination of its own facilities and another carrier's services. Nextel Partners currently provides the required services using its existing, facilities-based digital network infrastructure and licensed CMRS spectrum in Idaho. Tr. 20-21. Intervenors offered no evidence to challenge Nextel Partners' demonstrated satisfaction of this request. Accordingly, the Commission should find that Nextel Partners meets the requirement to provide service through its own facilities.

VI. NEXTEL PARTNERS HAS IDENTIFIED APPROPRIATE DESIGNATED SERVICE AREAS

A. The Standard for an ETC Service Area is Set forth in Federal Law

The final requirement for ETC designation (except for the public interest factor in rural LEC areas discussed below), is that a carrier establish appropriate service areas through which it will offer and advertise the supported services. 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural telephone company, 47 U.S.C. § 214(e)(5) provides that the term "service area" means the rural telephone company's "study area," unless and until the FCC and a state commission establish different service areas under the procedures set forth in 47 C.F.R. § 54.207(c)-(d).¹²

Exhibit 106 identifies the rural LEC study areas and Citizens exchanges for which Nextel Partners seeks designation as an ETC. Nextel Partners operates pursuant to licenses that cover the entire study areas of Albion, Filer Mutual, Fremont and Project Mutual. Thus, Nextel Partners seeks unconditional designation for these rural telephone companies. For the areas

¹² A "study area" is generally considered to be all of the rural telephone company's existing certificated exchange service areas in a given state. *Universal Service Order*, ¶ 172 n. 434.

served by Citizens, Nextel Partners seeks ETC designation conditioned on the Commission and FCC redefining the service area requirement for Citizens' service area on an exchange basis pursuant to 47 C.F.R. § 54.207(b). As explained below, Nextel Partners' redefinition request is fully consistent with federal law.

B. A New ETC Must Be Given a Reasonable Opportunity to Extend its Network in its Designated Areas

The FCC has made clear that a new entrant can be designated as an ETC before building out its network, and does not need to provide detailed business and buildout plans as part of an application.¹³ Instead, a new entrant like Nextel Partners should be designated as an ETC, and must be given a reasonable opportunity, subject to real world business limitations, to serve an area. The *Declaratory Ruling* contains the following discussion:

A new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas. We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.

No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service

¹³ *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*, CC Docket 96-45, Declaratory Ruling, FCC 00-248 (rel. Aug. 10, 2000) ("*Declaratory Ruling*").

support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.¹⁴

The Intervenor has argued in this case that Nextel Partners' Application should be denied because it does not have business plans that would show ubiquitous buildout within a short period of time. Tr. 521. This is, however, exactly the kind of showing the FCC rejected in the *Declaratory Order*. As Mr. Peabody explained, the company has been providing service for only a few years, and cannot make business commitments about specific additional buildout until it is designated as an ETC, evaluates funding levels, considers its capital budgets, and analyzes other market dynamics. Tr. 73.

Intervenor witnesses Mr. Trampush recognized on cross-examination that a company like Nextel Partners is obligated to make good financial decisions, and that capital markets simply do not allow companies to commit to huge investments without consideration of the financial impacts:

Q: Who provides the capital resources for a publicly-traded company to make capital investment?

A: Either equity shareholders or bondholders.

Q: And do those individuals require that the company make good economic decisions?

A: They look at business plans prior to making investments, yes, and the historic use of the funds.

Q: And if a company came in and promised to spend \$25 million to provide ubiquitous service throughout an area without considering the economic models, customer demand, revenue streams or the ability to make the investment back, nobody would give the company the money to spend, would they?

A: Well, no one would go to an investor without a business plan supporting that kind of capital.

¹⁴ *Declaratory Ruling*, ¶¶ 12-13 (emphasis added).

Tr. 560.

It is essential for the Commission to recognize that as a competitor, Nextel Partners is not guaranteed a single dollar from the federal universal service funds – it will obtain funds only for customers who choose its service. Because neither the Commission nor the FCC would guarantee cost recovery, a competitor simply cannot be required to commit the huge capital investments proposed by the Intervenors. Tr. 73 (Peabody) ("Intervenors propose that we guarantee that we will complete a significant buildout in a short period of time with no certainty that we will have any chance to make a profit. No unregulated new entrant could ever meet this standard."). Moreover, the notion that the Intervenors today provide "ubiquitous" service – or intend to do so – is simply wrong. As Mr. Wood testified, ILECs generally cover 2% - 3% of their service territory. Tr. 293. No one would suggest these carriers must demonstrate plans to cover the remaining 97% as a condition of ETC designation. The Intervenors' arguments are nothing more than artificial barriers to entry designed to protect their own financial interests, and should be rejected.

C. Nextel Partners has Accepted the Service Obligation Imposed on ETCs

The Commission should find that Nextel Partners has demonstrated an intent and ability to meet the obligations of an ETC. Nextel Partners has clearly undertaken the service obligations of an ETC:

"Upon designation, Nextel Partners will provide the supported services within those Designated Areas consistent with the obligations of an ETC." Application, ¶ 11.

"As is clear from the Idaho coverage map, Nextel Partners is well-equipped to respond to "reasonable requests for service" throughout the rural telephone company study areas for which it seeks designation in Idaho, and Nextel Partners will meet all of its legal obligations." Tr. 30-31.

"Nextel Partners is licensed in all areas where we seek ETC designation, and commits to meet the obligations of an ETC." Tr. 71.

In addition, Nextel Partners is willing to work with Commission Staff on an ongoing basis to show how funds are being used and to show progress in its network buildout. Nextel Partners has made the commitment to meet the service obligations imposed on all ETCs.

Nextel Partners has the ability to meet these obligations. Nextel Partners has already made a tremendous commitment to Idaho, operating pursuant to licenses that cover all requested ETC service areas. Tr. 71. As Mr. Peabody explained, these licenses were expensive and involved complex bidding procedures and extensive negotiations. Tr. 73. The Intervenor agrees this demonstrates a commitment to service these areas. Tr. 557 (Trampush); 608-09 (Tade). Second, Nextel Partners has accomplished a significant buildout of these areas in a few short years. Tr. 11; Exs. 103 and 104. Again, the Intervenor witnesses could not dispute the fact that this buildout represents significant action toward serving these areas. Tr. 557, 608-09. By its clear commitment, combined with significant action towards building out licensed areas, Nextel Partners meets the obligation to be designated as an ETC in all areas set forth in its Application.

VII. NEXTEL PARTNERS' ETC DESIGNATION IS IN THE PUBLIC INTEREST

Section 214(e)(2) gives the Commission the responsibility to make a public interest determination for designation of an additional ETC in an area served by a rural telephone company. In accordance with the stated purposes of the Act,¹⁵ the FCC has determined that the public interest is served when rural consumers are provided the benefits of competitive universal services. Thus, in the absence of empirical evidence that rural consumers will be harmed, or evidence that a specific rural telephone company study area cannot support competitive universal

¹⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996) ("To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.") (emphasis added).

service, the FCC has concluded that a CMRS provider should be designated as a competitive ETC in a rural telephone company area:

We conclude that it is in the public interest to designate Western Wireless as an ETC in Wyoming in those designated service areas that are served by rural telephone companies. Western Wireless has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition. We find that there is no empirical evidence on the record to support the contention that the designation of Western Wireless as an ETC in those designated service areas served by rural telephone companies in Wyoming will harm consumers. In fact, we conclude that those consumers will benefit from the provision of competitive service and new technologies in high-cost and rural areas.

We note that an important goal of the Act is to open local telecommunications markets to 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. We agree with Western Wireless that competition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we 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."

* * *

We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers. While we recognize that some rural areas may in fact be incapable of sustaining more than one ETC, no evidence to demonstrate this has been provided relating to the requested service areas. We believe such evidence would need to be before us before we could conclude that it is not in the public interest to designate Western Wireless as an ETC for those areas served by rural telephone companies.¹⁶

¹⁶ See *In the Matter of Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum

Consistent with these guiding principles, the Commission should consider the record evidence relating to the public interest in light of the following factors:

- Will the ETC designation facilitate competition in the provision of universal services to the benefit of Idaho's rural consumers?
- Does the record demonstrate any significant adverse impact to any rural consumers resulting from the ETC designation so significant as to justify denying rural consumers the benefits of competition?

The record before the Commission demonstrates the goals of the Act and the interests of the public will be promoted by granting ETC designation to Nextel Partners. Idaho's rural consumers will realize the benefits of competition through increased choices, and granting the designation will also further the deployment of new telecommunications services to Idaho's rural consumers. Further, there is no evidence that consumers may be harmed as a result of Nextel Partners' ETC designation. The Commission should approve Nextel Partners' Application consistent with the public interest.

A. Granting ETC Designation Will Facilitate Competition to the Benefit of Rural Consumers

The Commission should first determine that Nextel Partners' ETC designation will facilitate competition that will benefit rural consumers consistent with the public interest. The 1996 Act requires that universal service goals be accomplished through competition. The Fifth Circuit Court of Appeals confirmed this when it recognized that a "primary purpose" of the Act is "to herald and realize a new era of competition in the market for local telephone service while continuing to pursue the goal of universal service."¹⁷ The *Alenco* decision requires that the Act must be implemented in a way that accommodates the "dual mandates" of promoting both

Opinion and Order, DA 00-2896, ¶ 16-17, 22 (rel. Dec. 26, 2000) ("*Western Wireless Order*") (emphasis added).

¹⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 625 (5th Cir. 2000).

competition and universal service. *Id.* at 615. Moreover, the Act promised competitive telecommunications markets in all areas of the nation, not just in urban areas: "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services" 47 U.S.C. § 254(b)(3).

As Commissioner Smith noted at the hearing (Tr. 625), the Idaho Legislature has also determined that telecommunications markets should evolve to competitive markets, which will bring benefits to consumers:

The legislature further finds that the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry. The legislature encourages the development of open competition in the telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996.

Idaho Code § 62-602(4). Thus both federal and state law bring a significant policy preference for competitive markets, and this policy preference must be a driving force behind the public interest analysis.

1. Nextel Partners' Designation will Advance General Benefits of Competition

By designating Nextel Partners as an ETC the Commission will advance the development of competitive markets in Idaho. The Intervenors are the only universal service providers in their service areas (Tr. 544), and competitive landline markets have simply not developed in areas served by rural telephone companies. Wireless carriers offer the only real alternative for competitive universal service, and Nextel Partners stands ready, willing and able to take on the obligations of an ETC.

By designating Nextel Partners as a federal ETC, the Commission will allow consumers to choose their service provider by determining which carrier provides the most advantageous

pricing, services, service quality, customer service and service availability. Tr. 186. As the FCC has recognized, increased competition creates incentives for the rural LECs to improve their own networks, operate more efficiently and improve customer service, all of which benefits consumers and promotes universal service.¹⁸ The Wisconsin Public Service Commission (among others) has similarly found that "designating Nextel [Partners] as an ETC in areas served by rural companies will ... increase consumer choice ... spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains."¹⁹ This is supported by Mr. Wood's testimony in this case:

End users will benefit in the short term from a choice of suppliers that represent different technologies, and can choose the technology that best meets their needs. They can also select from a much broader array of service and pricing plans, and again can choose the plan that best meets their individual needs. Over the longer term, consumers will benefit as competitive market forces act to make all providers, including the ILECs, more efficient and responsive to customer needs.

Tr. 169. Intervenor witness Mr. Trampush also agreed that competitive markets can be expected to provide these benefits for consumers. Tr. 547 (agreeing that in a competitive market consumers are able to determine which offerings best meet their needs).

Facilitating competition by Nextel Partners thus serves the public interest because of the general benefits that competitive markets bring to rural consumers.

2. Nextel Partners' Designation Will Bring Specific Benefits to Idaho Consumers

In addition to general benefits of competition, Nextel Partners' designation will also bring significant specific benefits to the state of Idaho. Nextel Partners operates a highly sophisticated network that uses integrated Digital Enhanced Network (iDEN™) technology, a packet-based platform developed by Motorola. This all-digital technology provides exceptional sound and

¹⁸ *Wyoming Order*, ¶ 22.

¹⁹ *Nextel Partners Wisconsin Order*, p. 8.

transmission quality, using state-of-the-art methods capable of delivering Digital Cellular, Direct ConnectSM Service PUSH TO TALK[®] (walkie-talkie service), Mobile Messaging, and Internet access. Tr. 52-53.

As an ETC, Nextel Partners will provide services not otherwise available from the landline LECs. For example, current service offerings by incumbent LECs have restricted local calling areas, whereas Nextel Partners' local calling area is the entire state of Idaho. Tr. 29, 62. These expanded calling areas will be of great benefit to rural consumers who currently have to pay toll charges to reach some government offices, health care providers, businesses or family outside of a restricted landline calling area. Consumers are also able to choose service plans that include nationwide calling. Tr. 85. These options are not available from the incumbent ETCs.

Nextel Partners' service also provide the benefits of mobility, which is an important feature for many universal service consumers in rural areas, where the distance between landline phones is much greater than in urban areas. In addition, Nextel Partners' customers obtain the full benefits of mobility because they are never assessed a roaming charge. Tr. 121. Part of this mobility component is mobile 911 – the ability to reach a 911 operator away from home. This is a tremendous safety feature than simply cannot be provided by the incumbent ETCs. Tr. 84 (Peabody), 546 (Trampush). Nextel Partners also actively implements E911 requests, and provides its customers with GPS location technology where the PSAP has the ability to receive that information. Tr. 53.

Nextel Partners also offers its DirectConnect[™] walkie-talkie feature that allows NEXTEL users to connect to each other instantly. Tr. 84. This is a distinctive feature that Nextel Partners' customers find valuable, and which is not available from any other ETC. As Citizens recognizes, this and many other unique and advanced services distinguish Nextel Partners' service offerings from those of landline LECs. Tr. 619.

Designating Nextel Partners as an ETC will also serve the public interest by further facilitating the extensive role Nextel Partners plays in the provision of communications services to Idaho public schools, libraries and local, state and federal government agencies, specifically law enforcement. Nextel Partners presently provides wireless service for at least 9 Idaho colleges and universities, public schools and libraries, 17 divisions of Federal Government agencies in Idaho, and more than 50 state and local government agencies, including police, fire and similar first-responders. This segment of the Company's business is particularly important to Nextel Partners as it reflects the partnership Nextel has had with the public safety community. This commitment is further evidenced by Nextel Partners' investment of millions of dollars to address concerns arising from the power blackout in the eastern United States last summer. Tr. 143.

The Commission should thus find that designating Nextel Partners as an ETC will bring specific benefits to Idaho consumers, thus serving the public interest.

3. More Complete Network Deployment Will Benefit Idaho Consumers

Nextel Partners' ETC designation will also promote the deployment of wireless technologies throughout Idaho by allowing the Company to continue to enhance and expand its network infrastructure.²⁰ Access to universal service funding will allow Nextel Partners to continue to extend its network throughout the state, bringing wireless service to consumers who currently have none, and improving service to current wireless consumers. This network infrastructure will continue to be available to provide universal and advanced services to rural

²⁰ The Wisconsin Public Service Commission found that "the availability of high cost support for infrastructure deployment will allow Nextel [Partners] to expand its [service] availability." *Nextel Partners Wisconsin Order*, p. 8.

consumers in Idaho. In short, customers will benefit as Nextel Partners builds out its network facilities.

Nextel Partners provided evidence that its buildout of these areas depends on access to universal service support (Tr. 148), and that without support, such buildout may not happen at all. Tr. 145-46. Mr. Peabody gave two specific examples of how universal service funding may in fact be the push that is needed to bring private capital into areas of the state:

There's been a site in the [Parma] area that has been on and off our build list for a period of time. It's been approved and disapproved and approved and it's sort of in this limbo land. I am convinced that designation in that area would tip the scales and we would actually build for that community.

In eastern Idaho, there's a site that is in Hamer that is a two-sector site. Now, as you probably are aware, that has some advantages of cost, but we could very easily make that a three-sector site which would increase the footprint. Those typically cost 20 to \$30,000, so the folks in that community would benefit from having the ability to have Universal Service Funding.

Tr. 145-46. The Commission should find that designating Nextel Partners as an ETC will serve the public interest by promoting network buildout and expansion in rural areas of Idaho.

4. Nextel Partners Advances the Goal of Comparability in Section 254(b)(3)

Finally, Nextel Partners' service is fully consistent with Congress' basic universal service principle that rural consumers must be afforded access to telecommunications services reasonably comparable to those services provided in urban areas," and at rates comparable to those charged for similar services in urban areas. *See* 47 U.S.C. § 254(b)(3).

Nextel Partners' corporate mission is to provide NEXTEL services in small and rural markets at the same rates offered by Nextel Communications in large urban markets. Tr. 56-57; 87. This is exactly what universal service funds should be supporting. Even Citizens and ITA had to agree that consumers in rural areas should have access to the same services at comparable prices as offered to consumers in urban areas, and that Nextel Partners advances this central goal

of universal service. Tr. 549. To maintain this comparability in the long run, the Commission should designate Nextel Partners as an ETC.

B. Rural Consumers Will Not Be Harmed By Nextel Partners' ETC Designation

The Commission find there is no reason to believe consumers will be adversely affected by the ETC designation. Without such adverse impacts, the Intervenor's attempts to oppose Nextel Partners' Application must fail.

1. No Intervenor Service Areas Are Unable to Support Competitive Universal Service

The FCC has recognized that it is theoretically possible that a small service area might be unable to support multiple universal service providers, and that such a fact could be considered when evaluating the public interest.²¹ However, such a claim would need to be supported by hard evidence presented by the challenging ILECs. Here, the Intervenor made broad assertions that competition would not be sustainable. For example, Mr. Trampush first argued that Nextel Partners might "creamskim" the incumbent's best customers, placing the incumbent at risk. Tr. 494, 499, 501. However, he later disqualified himself on this point by stating that there is no evidence that wireless companies are taking away landline customers:

But if the many wireless carriers in the rural telephone companies service areas were in fact competing with the incumbent to provide universal service, we would expect to see significant line count losses by the incumbents. This simply hasn't happened.

Tr. 533. This admission makes clear that Nextel Partners' success with wireless business customers does not put the Intervenor at risk.²²

²¹ *Western Wireless Order*, ¶ 22.

²² Moreover, to the extent Citizens claims an inability to respond to competition, the Commission should reject such claims out of hand. Citizens obtains \$7 million of federal universal service funding in Idaho, \$130,000,000 nationwide, and is a very successful, national carrier. Tr. 605.

In addition, it is undisputed that the Intervenors will continue to receive funding based on embedded costs, even if they lose lines, through 2006. Tr. 220, 606. This extra protection for the Intervenors provides creates an opportunity to transition to competition, not fortify monopoly markets. This is exactly what the FCC said when it implemented this mechanism.²³ Tr. 232-33 (rural LECs have an "extended transition period in which to improve their efficiency, reduce their costs, and better prepare themselves to operate in a competitive market"). At bottom, the question is whether, based on the record, the Commission needs to choose between competition and universal service, or whether the two can co-exist. Mr. Trampush at the hearing testified the Commission can accomplish these two goals simultaneously:

Q: Do you believe this commission needs to make a choice between universal service and competition?

A: I don't believe so.

Tr. 551. The Commission should thus reject claims that Intervenor service areas are unable to support competition.

2. Consumers Are Not Harmed by The FCC's Regulation of Competitive Wireless Markets

The Intervenors have opposed designation of Nextel Partners because it provides wireless services regulated by the FCC, and is not subject to ILEC service quality rules. Tr. 588. Denial of the Application on those grounds would be unlawful and bad policy.

First, the FCC has made clear that a state commission cannot deny ETC designation simply because it does not regulate the service quality of the provider:

We note that not all carriers are subject to the jurisdiction of a state commission. Nothing in section 214(e)(1), however, requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier. Thus tribal telephone companies, CMRS providers,

²³ *Fourteenth Report and Order*, ¶ 10.

and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers.²⁴

Here, the fact is that the FCC, not the Commission, regulates the services provided by Nextel Partners. This regulatory reality does not change by virtue of the ETC designation. An adverse public interest finding based on Nextel Partners' regulatory status would be contrary to federal law.

There is also no policy reason to regulate Nextel Partners like an ILEC simply because it is an ETC. The FCC, which is responsible for regulating the wireless industry, has been very clear that its regulation of the national wireless market has worked. Tr. 89-91. The Intervenors failed to offer any evidence challenging the FCC's regulation of the industry. In addition, when questioned directly, Mr. Trampush, was unable to identify any specific harms to consumers that would result from designating wireless ETCs. Tr. 556. The fact that ILEC markets are not yet competitive is not a reason to regulate competitive wireless markets.

The record evidence shows that market forces are increasing the benefits to the public in the wireless industry. Nextel Partners, without being subject to the regulations the Intervenors propose, leads the industry in customer satisfaction and customer retention. Tr. 141. Moreover, as noted by Mr. Peabody, Nextel Partners' lowest-priced rate plan was reduced by over 15% – from \$36.00 to \$30.00 – since the Application was filed. Tr. 149. At the same time, the services within that package were expanded. Tr. 149. Market forces have driven Nextel Partners to reduce call blocking levels to less than 1% (Tr. 144), and to address backup power issues raised after the 2003 blackouts. Tr. 143. This is all market-driven, and fully consistent with industry trends that show consumers continue to receive better service and more value as competitive wireless markets are allowed to operate. The Intervenors' claims that wireless carriers must be

²⁴ *Universal Service Order*, ¶ 147.

subject to ILEC regulations to provide quality service should be rejected as unsupported the record and contrary to FCC determinations.

3. The Impact on the Federal Universal Service Fund Does Not Justify Denial of the Application

The Intervenors claim Nextel Partners' Application should be denied based on alleged adverse impact on the universal service fund. Tr. 596. The Commission should reject these purported public interest consideration.

The FCC itself has rejected these exact claims. The FCC stated in an order designating RCC Holdings as an ETC in Alabama:

Several parties to this proceeding raise concerns about the nature of high-cost support with regard to competitive ETCs. Such concerns include, for example, questions about the impact on the universal service fund of supporting competitive ETCs, as well as questions about subsidizing multiple lines used by the same subscriber. Although we find that these issues reach beyond the scope of this Order, which designates a particular carrier as an ETC, we recognize that these are important issues regarding universal service high-cost support. We note that the Commission has recently requested the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations to the Commission on the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.²⁵

As the *RCC Order* makes clear, the operation of the federal universal service fund is simply not an appropriate issue for consideration by the Commission in the context of this ETC designation proceeding.

In addition, as Mr. Wood explained, recent funding increases to ILECs "dwarf any impact on the size of the fund attributable to the designation of CETCs." Tr. 193. Yet the Intervenors do not seem opposed to increases that benefit themselves. Mr. Wood's expert

²⁵ *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3181, ¶ 3 (rel. Nov. 27, 2002) ("*RCC Order*") (emphasis added) (internal footnotes omitted).

testimony on this point was unchallenged. Ultimately, Mr. Trampush agreed the FCC's funding mechanisms are matters that will be addressed by the FCC. Tr. 544. The Commission should reject the Intervenor's claims that the fund must be protected by denying access to competitors.

C. Regulatory Differences Do Not Justify Denial of the Application

The Intervenor seeks denial of the Application claiming the Commission must require regulatory "parity" of all ETCs. Tr. 586. This has, however, been rejected by the FCC, and is utterly inconsistent with policy decisions made at the federal and state levels. ILECs, CLECs, and wireless carriers are all regulated differently for different reasons. As Mr. Wood stated:

ILECs have some distinct advantages, wireless carriers have some distinct advantages. Some of those are created by historic regulatory paradigms, some of those are created by technology, some are created by economics. Hopefully, some at some point will be created purely by customer demand, but the FCC has been very clear that there are advantages and disadvantages on both sides and the implementation of universal service support and ETC designation is not a process to somehow try to balance out each and every one of those advantages and disadvantages.

Tr. 317.

Ultimately, the Intervenor witnesses agreed that there are policy reasons why different types of carriers are regulated differently, and that regulatory parity is simply not achievable. Tr. 551 (Trampush), 618 (Tade). The Commission should recognize that ILEC calls for regulatory parity are anticompetitive and harmful to universal service.

D. Interconnection Agreements Can Be Negotiated Outside This Docket

Citizens made its lack of an interconnection agreement with Nextel Partners a major issue in this case.²⁶ Citizens contends that Nextel Partners "enjoy[s] the benefit of the ILECs' networks without paying for the use of those networks," and that if designated, Nextel Partners "will actually receive Federal monies to use for free the networks that were constructed and paid

²⁶ In fact, Citizens counsel went so far as to accuse Mr. Peabody personally of being a thief. Tr. 115.

for by the ILECs." Tr. 599-600. As the record was developed, however, it is clear that there is no formal agreement today because neither party has requested one of the other. Tr. 630-32 (Tade). Citizens has made a decision to this point not to make such a request. *Id.* At present, neither party is billing the other for termination services provided. Tr. 150. If and when such a request is made, Nextel Partners will negotiate with Citizens in good faith. Tr. 115. Until then, however, Nextel Partners believes that the status quo is more efficient than a formal interconnection agreement. Tr. 65-66. The Commission should find this to be a non-issue that can and will be resolved outside of this ETC docket.

VIII. THE COMMISSION SHOULD AUTHORIZE NEXTEL PARTNERS' DESIGNATION AS AN ETC IN THE CITIZENS EXCHANGES IN ITS APPLICATION

The Commission should also grant Nextel Partners' request for ETC designation in the Citizens exchanges, conditioned on redefining the service area requirement for Citizens' service area. As established above, Nextel Partners satisfies the basic requirements of Section 214(e)(1) and its designation serves the public interest as required by Section 214(e)(2). The only remaining condition to granting Nextel Partners' request for designation in the Citizens exchanges is redefinition of the service area requirement for those areas.

The Act and the FCC's regulations authorize the FCC and the Commission to act in concert to develop an alternative service area for a rural telephone company in accordance with 47 C.F.R. § 54.207(c)-(d). The sole requirement in establishing a service area other than the study area is that the FCC and the state commission each give full consideration to the Joint Board's recommendations and explain their rationale for reaching a different conclusion.²⁷

The FCC identified three factors initially recommended by the Joint Board which the Commission and the FCC should consider when redefining the service area requirement to less

²⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Universal Service Order*, ¶ 187.

than a rural telephone company's study area. The first factor is the risk of a new entrant only seeking to serve the low cost areas of the study area, known as "cream-skimming."²⁸ The FCC noted that if a competitor were required to serve a rural telephone company's entire study area, the risk of "cream-skimming" would be reduced because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchanges of the rural ILEC's study area. *Universal Service Order*, ¶ 189.

Second, a state commission and the FCC must consider the regulatory status enjoyed by rural telephone companies under the Act. The FCC determined that initially establishing a study area for a rural telephone company's service area was appropriate, at least temporarily, in recognition of the different treatment afforded to smaller rural telephone companies which are exempt from certain of the Act's requirements.²⁹ In making its recommendation, the Joint Board reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continues this exemption until the relevant state commission finds, inter alia, that a request of a rural telephone company for interconnection, unbundling, or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254.³⁰

The third factor is whether any administrative burdens might result from the redefinition of the service area given that a rural telephone company's universal service support payments are currently based on a rural company's embedded costs determined at the study area level.³¹ The

²⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 96J-3, ¶ 172 (rel. Nov. 8, 1996) ("*Joint Board Recommendations*").

²⁹ *Universal Service Order*, ¶ 189.

³⁰ *Joint Board Recommendations*, ¶ 173.

³¹ *Universal Service Order*, ¶ 189.

Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level.³²

The FCC has now stated a policy favoring redefinition in instances where a rural carrier's study area is large and/or non-contiguous. Indeed, the FCC has expressly urged State commissions to explore redefinition for purposes of ETC designations, and has cautioned that denying redefinition requests could impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service."³³

The study area of Citizens contains multiple exchanges, only some of which are located within the scope of Nextel Partners' authorized service areas. The most logical and appropriate method of approving designation of competitive ETCs is by individual exchanges.³⁴ Redefining this service area based on individual exchanges for purposes of ETC designations will promote competition by eliminating a barrier to entry into the universal services market.

The Commission can proceed to redefine the service areas on an exchange basis while appropriately taking into account the three factors noted by the Joint Board and adopted by the FCC, all of which support redefining the study area requirement in Citizens' service area.

The first factor – cream-skimming – is not present. Nextel Partners seeks redefinition of the service area requirement for Citizens' exchanges on an individual exchange based on its ability to serve those areas, not because it sought to cream-skim universal service support. Tr. 126. Logically, a cream-skimming strategy would involve a targeting of the highest support

³² *Joint Board Recommendations*, ¶ 174.

³³ *Universal Service Order*, ¶ 190.

³⁴ Nextel Partners does not, however, object to Clear Talk's request for redefinition within an exchange based on license boundaries.

exchanges, but this is not what Nextel Partners did. Tr. 311. In addition, because Citizens has already targeted its support on an exchange basis (Ex. 107), any chance of cream-skimming is eliminated:

The potential for "cream skimming" is ultimately moot because Citizens has already disaggregated USF support to the wire center level. Nextel Partners is likewise seeking redefinition" at the wire center level, meaning that it is mathematically impossible for Nextel partners to receive per-line support for the area it serves that is based on the average cost of a larger geographic area. If support and the areas of market entry are at disaggregated to the same level, the potential for "cream skimming" - to the extent it ever actually existed, is eliminated.

Tr. 183.³⁵

The second factor – the special status of a rural LEC – does not weigh against redefinition. Redefining the service area requirement for Citizens' service area on an individual exchange basis will not compromise or impair the unique treatment of Citizens as a rural telephone company under Section 251(f) of the Act. Consequently, Citizens will still retain the statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if its service area is redefined for purposes of ETC designations. In addition, the public interest standard under 47 U.S.C. § 214(e)(2) will remain in place. The continued existence of this as a safeguard that supports a redefinition request for ETC service areas. *Universal Service Order*, ¶ 190. Thus, Citizens would retain its unique status and special treatment under the Act even if its study area were redefined on an individual exchange basis.

The third and final Joint Board factor is the administrative cost of approving redefinition. Here, there are no administrative costs to consider because any federal universal service support

³⁵ See *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-3181, ¶ 39 (rel. Nov. 27, 2002) (finding that the risk of cream-skimming is "substantially minimized by the fact that several of the affected rural telephone companies in this proceeding have filed disaggregation and targeting plans at the wire center level").

available to a competitive ETC in an area served by one of the rural telephone companies would be determined based on the per-line support available to the rural telephone company itself. 47 C.F.R. § 54.307(a); *see also U.S. Cellular Wisconsin Order*, p. 10 ("Currently, a competitive ETC gets the same amount of federal high cost assistance per line as the ILEC."). Moreover, because Citizens has already target support by exchanges (Ex. 107), it has already undertaken any conceivable administrative costs associated with Nextel Partners' request.³⁶ This current funding mechanism will remain in place for approximately another three years, when the FCC is expected to make changes to the funding mechanism for rural telephone companies.

Redefining the service area requirement for Citizens' service area is necessary for the promotion of universal service because it will foster competition that otherwise does not exist. Unless the service area is redefined, Nextel Partners is precluded from being designated as an ETC in Citizens' exchanges because Nextel Partners cannot serve the entire study area. Redefinition is in the public interest because it will enable Nextel Partners, and other competitors, to bring new services and new technologies to Idaho customers currently served by Citizens who now have no choice of universal service providers.

Citizens argues that redefinition is anticompetitive because it "fosters asymmetric regulation." Tr. pp. 584-85. Yet, this provision is expressly provided for in the Act and the FCC's rules.³⁷ Moreover, the FCC has determined that redefinition facilitates local competition by enabling new providers to serve based on license areas.³⁸ The FCC noted: "We find that our

³⁶ While there was some discussion about the additional costs that might or might not be incurred if Citizens were to target support within a wire center, that issue is not relevant to Nextel Partners' request – which is for designation along exchange boundaries.

³⁷ *See, e.g.*, 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

³⁸ *In the Matter of Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of*

concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition."³⁹ The FCC concluded that Washington's "effort to facilitate local competition justifies [the FCC's] concurrence with the proposed service area designation." *Id.* Citizens' complains about "asymmetric regulation" should be rejected.

Redefining the service area requirement for Citizens' study area will foster competition in Idaho. It will enable Nextel Partners and other carriers to offer competitive universal services to Citizens' customers. This fostering of competition comports with the goals of the Act and the FCC's directives. Unless the Commission seeks redefinition, these customers Nextel Partners desires to serve will be denied all the benefits of competition that Congress and the FCC have sought to foster.

Therefore, the Commission should proceed to authorize the redefinition of the service area requirement for Citizens' study area and conditionally grant Nextel Partners' request for designation as an ETC in the Citizens exchanges identified on Exhibit 106.

IX. NEXTEL PARTNERS REQUESTS AN ORDER AND CERTIFICATION PRIOR TO MARCH 30, 2004

At the conclusion of the hearing, Nextel Partners informed the Commission that, while there was no statutory deadline for a ruling, it had a significant interest in obtaining final action in this case prior to the end of the first quarter of 2004. The Commission requested briefing explaining this issue. Tr. 637.

The federal universal service fund is administered by the Universal Service Administrative Company ("USAC"). Prior to disbursing funds to a new ETC, USAC must

Study Areas of the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order, CC Docket No. 96-45, DA 99-1844, ¶ 8 (rel. Sept. 9, 1999).

³⁹ *Id.*

receive line counts, an ETC designation order, and appropriate certifications indicating that the ETC will use federal funds for the purposes for which they are intended.

Nextel Partners has reported its lines, and has filed a self-certification regarding its use of certain support amounts as required by FCC Rules 54.809(a) and 54.904(a). So, for Nextel Partners to be eligible to receive disbursements of federal universal service funds that it will use in Idaho, USAC must receive a final order designating Nextel Partners as an ETC, and a state commission certification in accordance with FCC Rule 54.314(a). FCC Rule 54.314(a) requires a commission to file with USAC and the FCC certifications that Nextel Partners will use support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.⁴⁰

If the commission proceeds under Rule 54.314(a), Nextel Partners will file a certification with this Commission that it will use all funds received for the balance of 2004 for the purposes for which they are intended. Nextel Partners will further work with Staff to provide a sufficient level of detail for Staff and the Commission to confirm that funds received will in fact be spent appropriately.

FCC Rule 54.314(d) sets forth filing deadlines addressing this certification. If an ETC is to receive funds for an entire calendar year, that certification must be received by USAC and the FCC before October 1st of the prior calendar year. The Commission took such action in 2003 for incumbent ETCs. Rule 54.314(d)(3) provides that for carriers with certifications received on or before April 1st, those carriers shall receive certain universal service funds only in the third and fourth quarters of that year. If the April 1st deadline is missed, and a certification is filed

⁴⁰ In the alternative, the Commission could take the position under FCC Rule 54.314 that Nextel Partners is not subject to the jurisdiction of the state commission and direct Nextel Partners to self-certify to the FCC in accordance with Rule 54.314(b).

after April 1st but prior to July 1st, the carrier is eligible for the support only in the fourth quarter of that calendar year. As a result, a designation and certification prior to April 1st will provide more funds in 2004 that Nextel Partners can use to provide services and buildout its network.

X. CONCLUSION

The Act and the FCC's implementing orders and regulations establish clear, consistent and competitively fair mechanisms for allowing carriers, including a CMRS provider, to be designated as an ETC for the purpose of federal universal service support. Nextel Partners has shown that it provides the required services, satisfies all statutory and regulatory requirements, and can and will meet the obligations of an ETC. For rural consumers, the designation of Nextel Partners as an additional ETC in rural LEC study areas will bring overwhelming benefits, including competitive choice, new technology, and improved service, and so is clearly in the public interest. Nextel Partners respectfully requests the Commission to follow the directives and principles of federal law or issue an Order:

1. Finding Nextel Partners satisfies the requirements for ETC designation in the areas identified on Exhibit 106.
2. Finding the public interest is served by Nextel Partners' designation pursuant to 47 U.S.C. § 214(e)(2).
3. Finding that redefinition of Citizens' ETC service area is appropriate under 47 C.F.R. § 54.207, and directing Nextel Partners to file a Petition for approval of this redefinition with the FCC.
4. Ordering Nextel Partners to certify that it will use funds received in 2004 consistent with the requirements of 47 U.S.C. § 254(e), so that the Commission can file a certification with USAC and the FCC prior to April 1, 2004.

Dated: January 23, 2004

NPCR, INC. d/b/a NEXTEL PARTNERS

By 

McDEVITT & MILLER, LLP

Dean J. Miller

420 West Bannock Street

P.O. Box 2564-83701

Boise, Idaho 83702

Phone (208) 343-7500

Facsimile (208) 336-6912

BRIGGS AND MORGAN, P.A.

Philip R. Schenkenberg (MN #260551)

Matthew Slaven (MN #288226)

2200 First National Bank Building

332 Minnesota Street

Saint Paul, Minnesota 55101

Phone (651) 808-6600

Facsimile (651) 808-6450

COUNSEL FOR APPLICANT

NPCR, INC. d/b/a NEXTEL PARTNERS

FILED

IN THE MATTER OF THE APPLICATION OF)
NPCR, INC. D/B/A NEXTEL PARTNERS FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
PURSUANT TO SECTION 214(e)(2) OF THE)
COMMUNICATIONS ACT OF 1934, AS AMENDED)

DOCKET NO. 03-141-U
ORDER NO. 4

ORDER

On August 28, 2003, NPCR, Inc. d/b/a Nextel Partners ("Nextel") initiated this docket by filing a petition for designation as an eligible telecommunications carrier ("ETC") pursuant to section 214(e)(2) of the Federal Communications Act of 1934 as amended¹, ("the Federal Act"). Nextel's petition asserts that the Arkansas Public Service Commission ("APSC" or "this Commission") has established procedures for designation as an ETC² and that Nextel has complied with those procedures.

Nextel states that it is a commercial mobile radio service common carrier³ and seeks designation as an ETC for certain specified wire centers in a Southwestern Bell Telephone Company study area.⁴ Nextel asserts that, pursuant to § 214(e)(2) of the Federal Act and consistent with this Commission's Order in Docket No. 97-326-U, the Commission must designate more than one common carrier as an ETC in non-rural service areas as long as each carrier requesting ETC status meets the requirements of § 214(e)(2) of the Federal Act.

In support of its petition, Nextel offers the affidavit of Donald J. Manning, Vice President and General Counsel for Nextel. Mr. Manning's affidavit asserts that Nextel is able to offer all

¹ 47 U.S.C § 214 (e)(2).
² See *in the Matter of Determining Eligible Telecommunications Carriers in Arkansas*, Order No. 1, Docket 97-326-u (August 15, 1997).
³ Also referred to as a wireless or cellular carrier.
⁴ See attachment 1, exhibit A to Nextel's petition.

1
4

services and functionality required by 47 CFR § 54.101(a) to its customers using its own facilities in the Southwestern Bell wire center areas. Specifically, Nextel states that it is able to offer voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency service, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers. The affidavit states that Lifeline and Linkup programs, which can only be offered by ETCs, and toll blocking for Lifeline subscribers, will be made available when Nextel receives an ETC designation.

Three sets of comments were filed on September 29, 2003 by three groups of incumbent local exchange carriers (“ILECs”)⁵. The rural ILECs argue that wireless carriers are essentially unregulated in Arkansas and do not provide their customers with the protections provided in the APSC’s Telecommunications Provider Rules because wireless carriers are not subject to those rules. The rural ILECs argue that, because wireless carriers are not subject to the APSC’s Telecommunications Provider Rules, it may not be in the public interest to approve Nextel’s ETC request.

The rural ILECs also argue that if Nextel takes a customer from an ILEC, the rural ILECs would lose terminating access charges which would have been paid to rural ILECs for terminating the toll calls of the customer taken by Nextel. The rural ILECs acknowledge that Nextel would pay terminating access charges to rural ILECs for termination of toll calls from

⁵ The commenting parties are three groups of ILECS which will be referred to as (1) “the rural ILECS”, which consist of Arkansas Telephone Company, Inc.; Central Arkansas Telephone Cooperative, Inc.; Madison County Telephone Company; Magazine Telephone Company; Northern Arkansas Telephone Co.; Pinnacle Communications; Prairie Grove Telephone Company; Rice Belt Telephone Company; South Arkansas Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Walnut Hill Telephone Company; and Yell County Telephone Company (2) “the Ritter companies”, which consist of Ritter Communications Holdings, Inc. on behalf of its wholly owned subsidiaries Ritter Telephone Company and Tri-County Telephone Company, along with Yelcot Telephone Company and Mountain View Telephone Company and (3) “the CenturyTel companies” which consist of CenturyTel of Central Arkansas, LLC; CenturyTel of Northwest Arkansas, LLC; CenturyTel of Arkansas, Inc.; CenturyTel of Mountain Home, Inc.; CenturyTel of Redfield, Inc.; CenturyTel of South Arkansas, Inc.; Cleveland County Telephone Company, Inc.; and Decatur Telephone Company, Inc.

Nextel customers, however, the rural ILECs assert that the terminating access rates paid by wireless carriers are substantially less than those paid by other ILECs, such as Southwestern Bell, and the resulting reduction in access charges paid to the rural ILECs could affect their profitability and lead to rate increases for the customers of the rural ILECS.

The Ritter companies argue that ACA § 23-17-405(b) (5) provides that Nextel may not be designated as an ETC unless “it is determined by the Commission that the designation is in the public interest” and that Nextel is not entitled to an automatic grant of ETC status. The Ritter companies state that Nextel has failed to demonstrate that ETC designation for Nextel is in the public interest and that Nextel has not shown that competition will be materially increased or that new or advanced services will be delivered sooner as a result of Nextel receiving ETC designation. The Ritter companies assert that granting ETC status to Nextel could detrimentally effect the Federal Universal Service Fund, (“USF”), because the USF is funded by assessments on telecommunications providers’ interstate revenue and as the size of the USF grows, as a result of commercial mobile radio service providers receiving ETC status, the customers of the Ritter companies will be charged increasing amounts to fund the USF and will receive no demonstrable benefit.

The Ritter companies also argue that CMRS providers are not subject to the same quality of service standards as ILECs and are not required to act as a provider of last resort. The Ritter companies assert that the lack of these protections for Nextel’s customers leads to the conclusion that Nextel’s designation as an ETC is not in the public interest.

The Ritter companies’ comments also point out the continuing activity by the Federal-State Joint Board on Universal Service (“Joint Board”) and the United States House of Representatives Energy and Commerce Committee which are reviewing the operations of the USF. The Ritter companies suggest that this Commission wait until the Joint Board and

Congress have completed their reviews of the USF and made any necessary changes before granting ETC status to Nextel.

The CenturyTel companies also raise many of the issues that are currently under review by the Joint Board, arguing that the availability of affordable high quality telephone services to consumers is at risk because of the ever-increasing demands on the USF from new carriers being granted ETC status. The CenturyTel companies request that the APSC deny the ETC request and initiate a generic proceeding to examine the policy and factual issues presented by the application or delay any decision until the Joint Board reports its findings regarding the USF to the Federal Communications Commission ("FCC"). The CenturyTel companies refer to the "spiraling" demands on the USF caused by the influx of ETC applications asserting that Nextel does not need USF support to be competitive and that granting ETC status to carriers that do not need USF support places the USF at risk. The CenturyTel companies note that the Federal Universal Service charge has increased from 6.8 % to 9.3 % on interstate revenue over the past two years and note that this issue is currently under review by the Joint Board.

The CenturyTel companies also argue that, when a carrier like Nextel receives an ETC designation, it can increase its revenues through USF support funds regardless of whether it adds any additional customers or obtains any customers from the ILEC serving the same area. CenturyTel suggests that this ability to artificially inflate revenues through Federal USF support when it cannot be shown that the revenues are needed is contrary to the public interest.

The CenturyTel companies claim that Nextel has not shown that it is able to provide service in the entire study area, i.e., the geographical area for which Nextel seeks ETC status, and argue that the FCC rules which require wireless ETCs to use the customer billing address for the purpose of identifying the service location provides an opportunity for customers to misuse the service by obtaining service using a billing address within the ETC designated area, but using

the service primarily within the service area of a rural ILEC. The CenturyTel companies argue that the Commission should hold all pending ETC applications in abeyance until the FCC has an opportunity to consider the Joint Board recommendations on the issues raised by the CenturyTel companies in their comments.

The CenturyTel companies' comments also reiterate the arguments previously made asserting that when a wireless ETC captures a customer from an existing ILEC, the amount of access revenues received by ILECs terminating calls for the wireless ETC is less than the amount of terminating access which the ILEC would have received if it had terminated the call from another ILEC customer, thereby reducing the amount of access revenues available to the ILECs. The CenturyTel companies also argue that Nextel is not required to serve as a carrier of last resort and is not subject to the APSC's Telecommunications Provider Rules. The CenturyTel companies assert that because the Telecommunications Provider Rules are not applicable to Nextel, Nextel customers would not be able to file formal complaints and that the Commission could not require credits or refunds for service interruptions, billing errors or failure to provide service. The CenturyTel companies state that Nextel's rates are not subject to investigation by this Commission and that Nextel's customers deserve the protections of the Commission's Telecommunications Provider Rules. The CenturyTel companies assert that because Nextel is currently providing service in the area in which it seeks ETC designation, this Commission should conclude that adequate competition exists in the area and that it is not in the public interest to designate Nextel as an ETC since such designation would not further promote competition.

Nextel's response to the comments filed by the ILECs asserts that it has met all of the criteria set forth in the Federal Act and this Commission's previous orders regarding ETC designation. Nextel emphasizes that it is not seeking ETC designation in any area served by a

rural telecommunications company. Nextel argues that the Federal Act requires this Commission to provide Nextel with an ETC designation if it meets the qualifications set forth in 47 USC § 214(e)(1) and 47 CFR § 54.201(d). Nextel asserts that it has met those requirements and this Commission must, therefore, provide an ETC designation to Nextel. Nextel argues that FCC precedent holds that designation of an ETC in non-rural territory per se satisfies the public interest requirement, citing *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc. Petition for a Designation as an Eligible Telecommunication Carrier*, 18 FCC Rcd 3848 (released March 12, 2003).

Although the comments raise significant public policy issues, those issues are properly being addressed at the Congressional level and at the Federal Communications Commission. To the extent comments raise public policy issues such as the potential expansion of the Federal Universal Service Fund, these matters of public policy should be addressed at the Federal level and should not effect this Commission's decision in this case for two reasons. First, this Commission has no jurisdiction to make changes in the Federal USF or the laws under which the Federal USF is established, and, second, this Commission is obliged to follow the requirements of Arkansas law which require this Commission to act consistently with the Federal Act.

ACA § 23-17-405 provides that the Commission may designate other telecommunications providers to be eligible for high-cost support consistent with 47 USC § 214(e) (2). This grant of authority to the Commission is conditioned on the telecommunications provider accepting responsibility to provide service to all customers in the ILEC's local exchange area through its own facilities or a combination of facilities, and the support will not begin until the telecommunications provider has the facilities in place to serve the area. The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains, the telecommunications provider must advertise the availability and

charges for its services, and the Commission must determine that the designation is in the public interest.

47 USC § 214(e)(2) states that:

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission. Upon request and consistent with the public interest, convenience, and necessity, the State Commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State Commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State Commission shall find that the designation is in the public interest.

(Emphasis added).

Nextel seeks ETC designation in an area served by a non-rural telephone company. Section 214(e)(2) clearly directs the Commission to designate more than one common carrier as an ETC if the requirements of paragraph (1) are met. Sections 214 (e)(1)(A) and (B) require that the carrier seeking ETC status must “offer the services that are supported by Federal Universal Service support mechanisms under § 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and advertise the availability of such services and the charges therefore using media of general distribution.) The affidavit submitted by Nextel clearly indicates that Nextel has, or upon receiving ETC designation will, offer the services required and advertise the availability of those services in compliance with § 214(e)(1) and § 254(c) thereby meeting the requirements of § 214(e)(2) of the Federal Act.

ACA § 23-17-405 requires this Commission to act in a manner which is “consistent with § 214(e)(2) of the Federal Act . . .” The fact that Nextel has agreed to comply with § 214(e) in

obtaining ETC designation in an area served by a non-rural carrier is sufficient to determine that granting ETC status is consistent *per se* with the public interest. *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 18 FCC Rcd 3848 (released March 12, 2003); *Cellco Partnership d/b/a Bell Atlantic Mobile Petitioned for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, ¶ 14 (2000); *Pine Belt Cellular and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 17 Rcd 9589, ¶ 13 (2002).

In adopting the Telecommunications Regulatory Reform Act of 1997(ACA § 23-17-401 *et seq.*), the General Assembly stated that its intent was to provide for a system of regulation, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms. Many of the objections made to the granting of ETC status by the commenting parties suggest that the granting of ETC status could affect the profitability of those companies and possibly result in rate increases to their customers. They therefore argue that it is not in the public interest and is inconsistent with Arkansas law to approve the ETC request. This argument ignores the statutory intent to implement competition, which will obviously have an affect on the profitability of some companies, but will also provide competitive alternatives to customers. If the ILECs receive reduced terminating access charges from the contracts they have negotiated with wireless carriers, they should receive the benefit of paying reduced access charges for terminating their calls to the wireless networks. Additionally, the terminating access rates paid between ILECs and wireless carriers are negotiated rates which the ILECs have agreed to pay. The contracts between the ILECs and wireless carriers should not, therefore, provide a basis to deny ETC status to a wireless carrier.

The suggestion by the ILECs that granting ETC status could affect their profits and their customers' rates does not suggest that granting ETC status is not in the public interest. The granting of ETC status to Nextel will provide a competitive alternative for customers in the Southwestern Bell area in which Nextel seeks to provide service. The effect on the ILECs in Arkansas, resulting from the funding of the USF through assessments on all carriers' interstate services, is essentially the same regardless of whether an ETC request is granted in Arkansas or by another state commission. There will be some effect on amounts paid by Arkansas ILECs, since all carriers' interstate revenues are assessed to support the USF; however, denying the request would prohibit a group of Arkansas consumers from having the competitive alternatives available to customers in other states even though those Arkansas consumers would be indirectly paying for the benefits to customers in other states through payments for interstate services which originate or terminate in Arkansas.

To the extent that the commenting parties have suggested that the Commission delay its decision pending resolution of some of the issues raised in the comments and currently pending or under consideration in United States Congressional committees or before the FCC's Joint Board, the request to delay would be inconsistent with the requirements of 47 USC § 214 (e)(2) which states that the Commission "shall" grant the ETC request if the requirements of the statute are met. Additionally, the issues raised by the commenting parties are best dealt with in the appropriate forums which have the jurisdiction to effect any changes which might be deemed necessary.

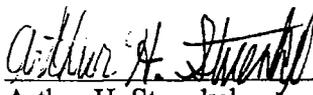
The commenting parties also argue that the ETC designation, if granted, should be conditioned on Nextel's agreement to submit to this Commission's jurisdiction for enforcement of the Commission's Telecommunications Provider Rules. This recommendation appears to be inconsistent with the requirements of ACA § 23-17-411(g), which substantially limits the

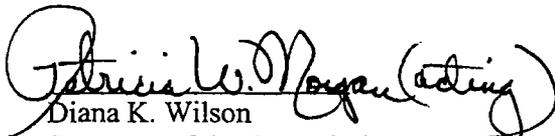
Commission's jurisdiction over commercial mobile radio services. The recommendation also lacks support under § 214(e) which requires the Commission to grant ETC status if the conditions set forth in the statute are met.

In view of the foregoing, the request by NPCR, Inc. d/b/a Nextel Partners for ETC status in the exchanges of Southwestern Bell Telephone Company-Arkansas (study area code 405211) is hereby granted.

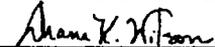
BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 22nd day of December, 2003.


Arthur H. Stuenkel
Presiding Officer


Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by the U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.


Diana K. Wilson

Secretary of the Commission
Date

12-22-2003

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2004 I caused to be served true and correct copies of the foregoing document, *Nextel Partners' Post Hearing Brief*, by the method(s) indicated, upon:

Glenn Ishihara, President IAT COMMUNICATIONS, INC. 703 Pier Avenue, Suite B; PMB 813 Hermosa Beach, California 90254	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Telecopy <input type="checkbox"/> Email <input type="checkbox"/>	Mary S. Hobson STOEL RIVES LLP 101 So. Capitol Blvd., Suite 1900 Boise, Idaho 83702 mshobson@stoel.com <i>Attorneys for Qwest Corporation</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>
Molly O'Leary RICHARDSON & O'LEARY 99 East State Street, Suite 200 P.O. Box 1849 Eagle, Idaho 83616 molly@richardsonandoleary.com <i>Attorney for IAT Communications, Inc.</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>	Robert M. Nielsen ATTORNEY AT LAW P.O. Box 706 Rupert, Idaho 83350 <i>Attorney for Project Mutual Telephone Cooperative Association, Inc.</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Telecopy <input type="checkbox"/> Email <input type="checkbox"/>
Conley E. Ward, Jr. GIVENS PURSLEY, LLP 227 North 6 th Street, Suite 200 P.O. Box 2720 Boise, Idaho 83701-2720 cew@givenspursley.com <i>Attorney for Idaho Telephone Association</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>	Charles H. Creason, Jr. President & General Manager PROJECT MUTUAL TELEPHONE COOP. 507 G Street P.O. Box 366 Rupert, Idaho 83350 ccreaseon@pmt.coop	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>
Clay Sturgis, Senior Manager MOSS ADAMS LLP 601 Riverside, Suite 1800 Spokane, Washington 99201-0063 clays@mossadams.com <i>Attorney for Idaho Telephone Association</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>	John Hammond, Deputy AG ID PUBLIC UTILITIES COMMISSION 472 West Washington Street P.O. Box 83720 Boise, Idaho 83720-0074 jhammon@puc.state.id.us <i>Commission Staff</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>
Morgan W. Richards MOFFAT THOMAS BARRETT ROCK & FIELDS 101 So. Capitol Blvd., 10 th Floor P.O. Box 829 Boise, Idaho 83701 mwr@moffatt.com <i>Attorneys for Citizens Telecommunications of Idaho</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>	Eric Steinmann, Corporate Counsel IAT COMMUNICATIONS, INC. P.O. Box 1976 Wrightwood, California 92397	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Telecopy <input type="checkbox"/>
Lance A. Tade, Manager State Government Affairs CITIZENS TELECOMMUNICATIONS OF IDAHO 4 Triad Center, Suite 200 Salt Lake City, Utah 84180 ltade@czn.com <i>Attorney for Citizens Telecommunications of Idaho</i>	Hand Delivered <input type="checkbox"/> Federal Express <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> Email <input checked="" type="checkbox"/>		


CERTIFICATE OF SERVICE