

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

In the Matter of)	
)	
Petition for Rulemaking to Define “Captured”)	RM-10522
And “New” Subscriber Lines for Purposes of)	
Receiving Universal Service Support,)	
Pursuant to 47 C.F.R. § 54.307 <i>et seq.</i>)	

**REPLY COMMENTS OF
NEXTEL PARTNERS, INC.
IN OPPOSITION TO NTCA PETITION**

Nextel Partners Inc. (“Nextel Partners”),¹ by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. Nextel Partners strongly opposes the NTCA Petition on its merits as an anticompetitive initiative seemingly intended to stifle incipient competition, particularly *wireless* competition, in the rural sector before it can take hold meaningfully. Nextel Partners also joins with many other commenters in the belief that the Petition is both premature and potentially disruptive to sound Commission policy. Thus, NTCA’s Petition should be denied because it seeks to consider only isolated and selective aspects of issues related to the Commission’s overall review of Universal Service funding portability that should only be considered, if at all, in the context of a unified proceeding.

¹ Nextel Partners provides digital wireless communication services in mid-sized and smaller markets throughout the United States, serving 58 markets where approximately 51 million people live or work. Nextel Partners offers its customers the same fully integrated four-in-one service available from Nextel Communications, Inc., which includes digital cellular, text/numeric messaging, Nextel Wireless Web services and Nextel Direct Connect digital two-way radio in a single phone. Nextel Partners’ business plan includes providing telecommunications services in high-cost rural areas.

DISCUSSION

I. NTCA’s Petition Need Not Be Considered on its Merits Because it is Premature and Disruptive to Adoption of Comprehensive Policies by the Commission

A. There is No Emergency Concerning Cost Support for CETCs That Needs to be Addressed At This Moment

NTCA’s Petition and the commenters that favor granting it represent that there is a crisis in USF funding – and that the crisis is due in great part to misuse and misallocation of high-cost funding to support competitive eligible telecommunications carriers (“CETCs”), *i.e.*, those carriers, both wireless and wireline, that compete with NTCA’s members, the rural incumbent local exchange carriers (“ILECs”). But as pointed out by both the Regulatory Commission of Alaska and the Washington Utilities and Transportation Commission (“WUTC”) in their early-filed reply comments, the “lion’s share” of the \$5 Billion of universal service support *already* goes to NTCA members and other rural ILECs. Out of this \$5 Billion, CETCs are projected to collect about \$76 million in high-cost support funds in 2002.² Thus, as the WUTC points out, “[i]t is obvious that whatever concerns there are about the total size of the fund, the concerns would exist if competitors received no support.”³

Accordingly, there is no real-world emergency that requires immediate action to stem the growth of funding to CETCs at this point, despite NTCA’s railings to the contrary. If there is a problem with the size of the fund, NTCA should look to the practices of its own members and other similarly-situated ILECs, and not to the relatively minuscule participation of a few competitors. If the issues raised by NTCA ever need to be considered, there is certainly no hurry to do so.

² See Reply Comments of the Washington Utilities and Transportation Commission (“WUTC Comments”) at 9; Reply Comments of the Regulatory Commission of Alaska at 3.

³ WUTC Comments at 9.

B. If NTCA’s Issues Warrant Consideration At All, It Should be In a More Comprehensive Future Proceeding

In the absence of any pressing need to take immediate action, and putting aside for the moment the question of whether the legal and policy choices advocated by NTCA in its Petition are, or are not, valid, the first question the Commission should ask is whether *now* is the time to consider these issues, and whether this *context* is the best vehicle for reaching a solid and sensible conclusion as to the matters raised. Nextel Partners believes the answer to both of these questions is a resounding, “no.” There are several points raised by the commenters in this proceeding that make it clear that, if the issues raised by NTCA are to be considered on their merits, it should *not* be in the context of a rulemaking based on NTCA’s Petition. Nextel Partners generally concurs with these comments to the extent that they believe the Commission should deny or at least defer consideration of the issues raised by NTCA.

For example, the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), which represents “over 500 small telecommunications carriers serving rural areas of the United States,” argues quite sensibly that the instant proceeding is not the time or place to consider the issues raised by NTCA, regardless of their merits. As pointed out by OPASTCO, the “majority of telecommunications industry stakeholders” were not even aware of this proceeding “until very recently,” because it arose from an “unanticipated source,” *i.e.*, the Consumer and Governmental Affairs Bureau.⁴ As a result, OPASTCO contends that the issues raised by NTCA should be considered “in the future as part of a comprehensive Notice on the subject of universal service support portability.”⁵ OPASTCO continues to observe that there are “a myriad of issues that relate to universal service portability,”

⁴ See OPASTCO Comments at 2.

⁵ *Id.*

and that all issues must be considered at once, not just the selected issues raised by NTCA in its Petition.⁶ To this end, OPASTCO opines that the issues raised in NTCA’s Petition should be folded into a future Wireline Competition Bureau proceeding regarding issues of portability of universal service fund (“USF”) support.⁷ This, OPASTCO argues, would allow stakeholders to “consider all the issues associated with USF portability in one unified proceeding.”⁸

Even commenters that strongly support many of the positions taken in the NTCA Petition, such as the Rural Independent Competitive Alliance (“RICA”),⁹ nevertheless believe that this proceeding should *not* be the vehicle for resolving the issues raised. RICA suggests that the Commission instead adopt “an alternative approach to the issues which would ensure that support is provided on an equitable and competitively neutral basis.”¹⁰ Moreover, Verizon, which generally seems to concur with many of NTCA’s points, does not squarely support the grant of NTCA’s Petition, but points to broader, inextricably intertwined issues that should be

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (emphasis in original).

⁹ RICA is “an alliance of competitive local exchange carriers (“CLECs”) operating in rural areas and affiliated with Rural Telephone Companies.” *See* Comments of the Rural Independent Competitive Alliance at 1.

¹⁰ *See* Comments of the Rural Independent Competitive Alliance at 1 and 5. Nextel Partners does not, however, agree with RICA’s suggested solution, *viz.*, that high-cost support should no longer be based on the number of lines served, but rather on “the amount of support needed by each ETC to achieve the objectives of Section 254 and meet its obligations as an ETC.” *See* Comments of the Rural Independent Competitive Alliance at 4. RICA’s suggested solution, coupled with its implication that wireless carriers may be receiving “excessive compensation,” *id.* at 2, seems targeted at minimizing support for wireless carriers serving rural areas, while maximizing support for RICA’s rural wireline CLEC constituents. Nextel Partners does not believe that the competitive landscape in rural areas will be improved either by attempting a company-by-company support needs appraisal, or by breaking competitive eligible telecommunications carriers (“CETCs”) into generic categories for purposes of USF support. *The most “competitively neutral” means of distributing the high-cost support payments is the one currently in place.*

raised in the context of a more comprehensive Commission rulemaking.¹¹

The sensibility of deferring consideration of the issues raised in NTCA's Petition until a later date was also emphatically supported in comments filed by the WUTC and by two public utility commissions that filed their reply comments early (the Public Service Commission of Wisconsin, and the Regulatory Commission of Alaska). The Wisconsin PSC observes:¹²

There are numerous issues that relate to the existing universal service programs and the portability of support. The NTCA has identified one important issue; however, it should not be and cannot responsibly be addressed without consideration of the broader picture. Accordingly, we support the comments noted above from OPASTCO, RICA and Verizon, to the extent they recommend that the FCC examine this NTCA issue in the context of a larger, more comprehensive review of how support for rural and high-cost areas is determined, distributed, and funded. Universal service is a key aspect of all telecommunications and regulatory policy in the nation. It must remain a high priority and be examined with diligence and with input from all interested parties.

In sum, regardless of the merits *vel non* of NTCA's Petition, there appears to be a meaningful consensus that this proceeding is *not* the correct vehicle for the consideration of the issues raised. If they are considered at all (and Nextel Partners' view is that they do not merit any further consideration, *see infra*), they should be considered in the context of a unified proceeding that addresses the full panoply of interrelated issues, and with full participation of all interested parties, including most prominently the Joint Federal-State Board. Thus, NTCA's Petition should be denied, because it simply does not offer the correct vehicle for comprehensive and sensible policy making in the crucial Universal Service arena.

¹¹ See Comments of Verizon at 1 and 4.

¹² Reply Comments of the Public Service Commission of Wisconsin at 5. See also Reply Comments of the Regulatory Commission of Alaska at 4-5 (*all* funding portability issues, not just those proposed by NTCA, must be considered in a unified proceeding referred to the Universal Service Joint Board) *and* Comments of the Washington Utilities and Transportation Commission at 9-10 (NTCA's issues should be considered, *if at all*, only after the Federal-State Joint Board on Universal Service has studied the issues).

II. On its Merits, NTCA's Petition Should be Denied as Anticompetitive, Unreasonably Discriminatory and Adverse to the Public Interest

As discussed above, it is not necessary for the Commission to resolve the issues raised by NTCA in this proceeding. If the Commission does determine to address the Petition on its merits, NTCA's positions should be rejected as anticompetitive and unreasonably discriminatory against CETCs, and adverse to the interest of the public. As pointed out in the comments of the Competitive Universal Service Coalition ("CUSC"), NTCA's Petition is merely an "attempt to go back in time and reestablish the [ILEC] monopoly in the local telephone service market,"¹³ before competition in rural areas can even get a meaningful toehold. In particular, NTCA's Petition seems targeted to prevent the entrance of wireless competition in the rural sector, an approach that obviously conflicts with the interest of the rural consumer.

A. No "Clarification" is Necessary for the Definitions in Rule 54.307

Nextel Partners agrees with CUSC and other opposing commenters that *no* changes are needed to the Commission's Rules at present to "clarify" the definitions of "new" and "captured" lines, particularly if this relatively innocuous-looking "definitional" strategy is at root an attempt to stop competition in its tracks. Nextel Partners agrees that the Commission has *already* established clear interpretations of the terms "new" and "captured" lines for purposes of Section 254 of the Act and Section 54.307 of the Rules, which mandates that a CETC receives support "for each line it serves, based on the support the incumbent local exchange carrier would receive for serving that line."¹⁴ NTCA's proffered assistance in "clarifying" these terms is in reality a thinly-veiled substantive disagreement with the policy choices *already* consciously made by the

¹³ CUSC Comments at 1.

¹⁴ See *Federal-State Joint Board on Universal Service*, 15 FCC Rcd 8746, 8786 at ¶ 16 (2000).

Commission, and an attempt to overturn the existing regulatory scheme.

The statutory objective of USF support for telecommunications companies plying their trade in rural areas is unambiguous: the achievement of a rough parity between the options enjoyed by consumers in urban areas and those in more remote locations. The statute provides:

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, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁵

The statutory emphasis is *not* on the issue of whether incumbent providers should continue to dominate, or for that matter, whether any one type of provider should be supported more or less than another type. The focus is on the *consumer*, and the *consumer's* rights to have technologically comparable service and service options at a fair price, regardless of whether he or she is in downtown Manhattan or on a remote ranch in West Texas.

However, NTCA's Petition is not focused on the consumer, and does not contribute helpfully to Section 254's twin goals of encouraging competition and ensuring universal service in the rural sector. Rather, it seeks to *undermine* nascent competition – and the public interest -- by removing crucial cost supports from competitors, while maintaining them on a “business as usual” basis for existing incumbents. The adoption of the “clarified” definitions sought by NTCA would in fact create a blatantly unfair and discriminatory situation in which CETCs are denied USF support for transactions for which ILECs would continue to receive USF support.¹⁶

As correctly observed by the CUSC in its comments:¹⁷

¹⁵ 47 U.S.C. § 254(b)(3) (emphasis supplied).

¹⁶ *Id.* at 2-3.

¹⁷ CUSC Comments at 6-7 (emphasis supplied).

NTCA's definitions, in effect, would provide each ILEC with high-cost support for every line it serves, regardless of how many lines a customer purchase and how many other carriers besides the ILEC the customer does business with, *but would provide support to a CETC only if it is the exclusive carrier the customer does business with and has ever done business with.*

Such a blatantly anticompetitive and unreasonably discriminatory division of high-cost support funds will not benefit the consumers in rural areas. Increased services, options and reasonable prices will not be achieved by the strengthening of ILEC monopoly domination of rural markets.

The *only* sensible way to provide rural consumers with the panoply of services and options roughly comparable to those enjoyed by urban consumers is to *encourage* the spread of viable competition, in all of its manifestations, including both wireline and wireless entrants. The Commission's current policy realizes this salient truth. As WUTC observes:¹⁸

There is nothing in the Act to suggest that Congress meant that customers who reside in low-revenue locations should be denied the benefits of *competition* or access to wireless services that are offered by providers other than NTCA members.

B. NTCA's Emphasis on Deterring Competitive Entrance of Wireless Companies is Both Unreasonably Discriminatory and Adverse to the Interests of Rural Consumers

NTCA's Petition unmistakably seeks to undermine the entrance of *wireless* competitors in particular by claiming severally that (i) the billing address method used by wireless companies to report loop counts results in duplicative support;¹⁹ (ii) wireless companies may report loop counts exceeding those of the ILEC in a given zone,²⁰ and (iii) wireless carriers are unfairly advantaged in that they are exempt from rate and state entry regulation.²¹

¹⁸ WUTC Reply Comments at 3.

¹⁹ NTCA Petition at 2.

²⁰ *Id.* at 3.

²¹ *Id.* at 10.

NTCA is merely considering the parochial interests of its own ILEC members, and is not taking the interests of the rural consumer to heart. The reply comments of the WUTC that illustrate its experience in addressing the equities of designating wireless carriers for ETC status are quite instructive. When the WUTC was considering approving a wireless carrier's application for CETC status, rural ILECs complained that wireless service is not used to provide basic service, but is rather used in addition to landline service to homes and businesses,²² essentially NTCA's "duplicative service" complaint. The WUTC's response in approving the wireless carrier's application was that "we do not believe we should constrain rural citizens to communication only from their homes."²³ It would seem apparent that rural users may have even more pressing needs for wireless services than urban dwellers, who are seldom more than a city block away from a pay phone. To deprive wireless companies of the incentive to serve relatively low-revenue rural locales is to deprive consumers in those areas of ever achieving rough parity with their urban counterparts, and this is an outcome that flies in the face of Congress' intent. In its reply comments, the WUTC illustrates the urgency of encouraging competitive wireless entry into rural areas:²⁴

Rural residents may travel farther from home than urban residents to meet their daily needs of education, shopping, banking, purchasing gasoline, and most every other daily activity. Mobile communications can be very beneficial in the accomplishment of these activities. Indeed, if the tractor breaks down in a remote field, or the car breaks down on a rural highway, a wireless telephone may save hours of time walking to the nearest landline telephone.

Similarly, the WUTC rejects outright the implication by the NTCA that rural wireless carriers are somehow receiving an unwarranted "windfall" by virtue of CETC status.²⁵

²² WUTC Reply Comments at 5.

²³ *Id.* at 6.

²⁴ WUTC Reply Comments at 6.

²⁵ *Id.* at 8.

Even if some carriers have costs that are less than the rural incumbents' costs, this differential does not constitute a windfall. Rather, the cost savings represent additional money that must be invested for the provision, maintenance, and upgrading of facilities and services used to provide universal service.

* * * *

In granting ETC designation to the wireless carrier, we based our decision on the policy to create competition and provide the benefits of competition to rural customers. If the wireless carrier's costs are lower than the local rural ILEC's costs, then the wireless infrastructure will expand at a more rapid rate than was the case with the rural ILEC over the last several decades.

The Commission should carefully consider the WUTC's experience and viewpoint if it chooses to rule on the merits of NTCA's Petition: the focus should be on increasing the options, and affordability of telecommunications services available to the rural consumer, rather than selectively favoring one company, or technology, over another. Nextel Partners believes that the *existing approach* taken by the FCC has fairly and reasonably taken these issues into account, resulting in a policy that squares eminently well with the statutory objectives. As such, no wholesale change in approach is warranted, and NTCA's self-serving Petition should be denied in its entirety.

CONCLUSION

In conclusion, Nextel Partners does not believe the issues raised by NTCA's Petition, aimed as they are at nipping potential competition in the bud, are worthy of serious consideration at all. The Petition should be denied without further ado as blatantly anticompetitive, discriminatory and in serious conflict with the best interests of rural consumers. However, if the Commission nevertheless elects to consider any of the issues raised in the Petition, they should not be addressed in this proceeding, but rather should be taken up as part of a larger and more comprehensive look at the Universal Service issues that are inextricably intertwined, not on a piecemeal basis.

Respectfully submitted,

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October 7, 2002