



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

July 14, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: NPCR, INC d/b/a Nextel Partners Petition for Designation as an Eligible  
Telecommunications Carrier in the Commonwealth of Pennsylvania;  
Docket No. 96-45; **REPLY COMMENTS OF THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Dear Ms. Dortch:

Enclosed for filing with the Commission are the Reply Comments of the  
Pennsylvania Public Utility Commission in the above-captioned proceeding. Please  
acknowledge receipt and acceptance of this filing via electronic medium.

If you have any questions concerning this filing, please direct them to me.

Very truly yours,

Elizabeth H. Barnes  
Assistant Counsel

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
NPCR, INC. d/b/a NEXTEL PARTNERS	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier	)	
in the Commonwealth of Pennsylvania	)	

---

**THE PENNSYLVANIA PUBLIC UTILITY COMMISSION’S  
REPLY COMMENTS**

---

The Pennsylvania Public Utility Commission (“PaPUC”) hereby respectfully submits these Reply Comments in response to the Commission’s Public Notice released on June 12, 2003, which seeks comment on the NPCR, Inc. d/b/a Nextel Partners’ (Nextel) Petition for Designation as an Eligible Telecommunications Carrier (ETC) in the Commonwealth of Pennsylvania (Petition). Nextel is a commercial mobile radio service provider (CMRS) and it seeks ETC status to obtain low-income and high-cost support from the federal Universal Service Fund.

First, Pennsylvania has refrained from exercising jurisdiction over CMRS for purposes of making determinations concerning eligibility for ETC designations under 47 U.S.C. §2214(e) and 47 C.F.R. §§54.201, *et seq.*, 66 Pa.C.S. §102. We have not,

however, relinquished our jurisdiction altogether because we have an interest in fair competition in the telecommunications market in the Commonwealth of Pennsylvania.

As a condition to the FCC's ETC designation, Nextel could be required to offer a showing that the company intends and is able to provide telephone service to everyone throughout the proposed service territory identified in the map they attached to their petition. The proposed service territory covers a wide area, from the western to the eastern portions of the Commonwealth. The FCC should consider the implications of granting an ETC status if it allows Nextel to offer service to only those customers in the higher densities that pay higher rates, and avoid customers in the more rural areas. The FCC should also consider the implications of granting an ETC status if it allows the carrier to selectively market to the most lucrative customers in an ILEC's territory and, most particularly those ILECs serving a rural area. One way to manage this might be to impose a corresponding duty to offer its service throughout the service territory it seeks and an affirmative showing of an ability to do so.

Second, the PaPUC is concerned about the loss of revenues to businesses operating in Pennsylvania. This results in less gross receipts taxes to our Department of Revenue, a smaller assessment base for the PaPUC, and thus higher expenses for regulated wireline carriers. Pennsylvania does not currently apply a gross receipts tax to wireless carriers. Although our State legislature is currently considering a gross receipts tax, this is being contested by the wireless carriers on the basis of federal prohibition. 4 U.S.C.A. §§116-126. The FCC should address the issue of the loss of revenues to the

States wherein the ETC wireless carriers are unregulated, untaxed and competing directly for the customers of state-regulated wireline carriers.

We recognize a growing trend in which the unregulated cable and wireless industries are taking customers from the regulated fixed wireline utilities. For example, in June, 2003, *Billing World & OSS Today* published an article entitled “*Cell Phones Calls Beat Out Wireline.*” The article on page 10, cited to a Yankee Group report wherein it found that national subscribers spent more time on their cell phones than their wireline phones in the last quarter of 2002. The report further predicted that the “cord cutting” trend will increase when wireless number portability enables landline numbers to be ported to cell phones.

We are committed to encouraging technological advancement and choice within an ILEC’s territory and rural ILECs in particular. There should not be an unfair competitive advantage to the wireless carrier, which does not have to contribute to the Pennsylvania Universal Service Fund, which does not pay access charges, which is not taxed by the State government within which it offers phone service, and which does not pay assessments to help fund the PaPUC, and which might not be required to be a universal provider in order to receive universal service support.

We infer from Nextel’s filing for ETC status that the company intends to substitute its wireless phone service for the land-line phone service in the territories it intends to compete. Once it obtains the high cost and low income support, it can go head-to-head with the wire-lined phone companies and offer the low income programs of

Lifeline and Link up to the customers of other ETCs. Additionally, it seems unfair that a wireless phone company which offers its service in bundled packages, all of which include numerous vertical services like voice mail, and caller id, is not held to the same restrictions on vertical services that Pennsylvania's other companies have regarding the offering of their Lifeline/Link Up programs. In Pennsylvania, Verizon customers are restricted to either no vertical services under Lifeline 100, or one vertical service under Lifeline 150. The reasoning is because Lifeline is supposed to offer a discount to basic telephone service to the needy, not to offer a discount for phone service including numerous profitable vertical services.

Furthermore, the petitioner is arguably a lower-cost wireless company seeking universal service support from a fund whose costs are premised on higher-cost landline carriers. The FCC's decision should take this support-cost differential into consideration when making ETC designation decisions. Traditionally, high-cost support in rural areas has been based upon an ILEC's costs. The wireless carrier does not have the same costs, and it could be required to make a showing of what its costs would be to provide service in the same areas as a precondition to receiving the universal service support traditionally allocated to universal providers.

The PaPUC notes that federal law expressly preserves the States' authority over other terms and conditions of services provided by CMRS providers, and States also have the power to petition the FCC for authority to regulate the rates for CMRS where market

conditions fail to protect subscribers adequately from unjust and unreasonable rates. The FCC permits state assessments on wireless carriers for universal service purposes regardless of whether that state regulates wireless carriers. Also, States retain the authority to protect the public safety and welfare, and safeguard the rights of consumers. However, in States such as Pennsylvania where utility regulators have refrained from exercising jurisdiction over CMRS providers, the FCC must assure that the ETC designation is not simply an attempt to secure federal monies without assurances that the monies be used for their intended purposes in high cost and low income areas, and that the company be able and willing to offer toll-limiting and Lifeline/Link-up services to those customers that could benefit from it in the entire service territory. The carrier could be expected to provide service to all customers throughout its designated ETC territory.

Respectfully submitted,

Pennsylvania Public Utility Commission

---

Elizabeth H. Barnes  
Assistant Counsel

Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 772-5408

Dated: July 14, 2003