

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket 96-45
Universal Service	)	
	)	
<b>NPCR, INC. d/b/a NEXTEL PARTNERS</b>	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
in the Commonwealth of Pennsylvania	)	
_____	)	

**REPLY COMMENTS OF  
NEXTEL PARTNERS**

NPCR, INC. d/b/a NEXTEL PARTNERS

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Date: July 14, 2003

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## SUMMARY

Commenters Commonwealth Telephone and Pennsylvania Telephone Association fail to establish any legal, factual or policy reason to deny Nextel Partners' Petition for Eligible Telecommunications Carrier designation in this proceeding. Both Commenters seek to apply irrelevant standards that are not required by applicable law, and both commenters attempt to argue that Nextel Partners must cover all of its proposed service area at the outset, before designation. These arguments lack merit, and should be rejected.

Nextel Partners has demonstrated in its Petition that the innovative services, enhanced consumer choices, and increased competition that it brings to the rural telephone company study areas for which it seeks designation significantly benefit the public interest in Pennsylvania. Neither commenter has presented any evidence to refute Nextel Partners' representations in its Petition that providing high cost support for Nextel Partners in Pennsylvania will favor the public interest. Nor has either commenter demonstrated that any harm will result, either to the consumer or to any rural telephone company.

In sum, Nextel Partners has met all of the requirements set by applicable law for a Petition for Designation as an Eligible Telecommunications Carrier, there are cognizable public interest benefits in granting this Petition, and no demonstrable harm will result. Accordingly, the Commission should grant Nextel Partners' Petition without delay.

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NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel hereby submits its “Reply Comments” in the above-captioned proceeding in response to comments filed by Commonwealth Telephone Company (“Commonwealth”) and the Pennsylvania Telephone Association (“PTA”).<sup>1</sup>

Nextel Partners’ April 3, 2003 Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) demonstrated that Nextel Partners provides, or upon designation will provide, all of the services and functionalities required of an ETC pursuant to applicable law, and that the public interest in Pennsylvania would be served by designating Nextel Partners as an ETC.

The two commenters raise a variety of issues, none of which constitutes any cognizable legal, factual or policy basis for the denial of Nextel Partners’ ETC status. PTA contends that (i) the Petition is not correctly before this Commission, and should instead be decided by the

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<sup>1</sup> Nextel Partners’ Reply Comments are timely filed. See Public Notice, *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, CC Docket No. 96-45, DA 03-1929 (rel. June 12, 2003) (reply comments due July 14, 2003).

Pennsylvania Public Utility Commission (“PAPUC”); (ii) Nextel Partners does not already provide ubiquitous service to all of its proposed service area, and therefore cannot be designated an ETC; (iii) Nextel Partners does not already provide all of the supported services, and therefore cannot be designated an ETC; and (iv) grant of Nextel Partners’ Petition will not serve the public interest because, *inter alia*, Nextel Partners does not provide Local Number Portability (“LNP”), the Universal Service Fund (“USF”) is getting to be too large, and Pennsylvania Telephone Companies already invest in their own facilities. As discussed herein, PTA’s comments do not warrant denying Nextel Partners’ Petition.

Commonwealth concedes that ubiquitous coverage is not required for designation, and admits that the Commission requires only the intent and ability to provide service throughout the designated service area, but Commonwealth claims nevertheless that Nextel Partners’ coverage in Commonwealth’s own study area is deficient. In addition, Commonwealth claims that the public interest does not favor grant of Nextel Partners’ Petition, because, *inter alia*, other wireless companies already operate in Commonwealth’s study area, and Commonwealth is engaged in the modernization of its facilities. Commonwealth’s comments likewise do not warrant the denial of Nextel Partners’ Petition.

The Commission must reject the various assertions raised by Commonwealth and the PTA in opposition to Nextel Partners’ Petition, because they are merely repetitive of arguments previously rejected by the Commission. The Commission should grant Nextel Partners’ Petition for Designation as an ETC without further delay.

**I. Nextel Partners’ Petition for Designation as an ETC is Properly Before This Commission**

PTA claims in its Comments that this Commission cannot decide Nextel Partners’ Petition because jurisdiction “properly lies” with PAPUC.<sup>2</sup> According to PTA, PAPUC somehow erred in relying on a Pennsylvania statute that, as PTA itself concedes, “effectively exempts CMRS providers from PAPUC regulation concerning matters found in the Pennsylvania Public Utility Code.”<sup>3</sup> PTA’s apparent contention is that PAPUC should have simply ignored the fact that its enabling statute did not allow it to regulate CMRS carriers, and instead looked to Section 214 of the Act for its authorization to make ETC determinations for CMRS carriers. PTA asserts that the Act “does not contain a CMRS exemption,”<sup>4</sup> and that therefore “Nextel should be required” to bring its petition before the PAPUC “and not this Commission.”<sup>5</sup>

In the final analysis, it is up to the individual state commission, in this case, PAPUC, to determine whether it has, or wishes to claim, jurisdiction over any matter, and that is simply the end of the question for purposes of invoking federal jurisdiction under Section 214(e)(6) of the Act. In order to invoke this Commission’s jurisdiction for consideration of an ETC petition, it is *not* necessary to demonstrate that a state commission is “correct” in its determination that it lacks

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<sup>2</sup> PTA Comments at 3-4.

<sup>3</sup> PTA Comments at 4.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

jurisdiction, but only that the state commission has in fact *affirmatively stated* that it lacks jurisdiction.<sup>6</sup>

PTA cannot reasonably request this Commission to *overrule* PAPUC's determination that it lacks jurisdiction, and find that the PAPUC in fact *does have jurisdiction* to decide Nextel Partners' Petition. This unlikely action would place the Commission in the untenable position of being the arbiter of whether a state commission that has already determined it will not decide an ETC petition "really" lacks the jurisdiction to make such a determination.

The Commission's established procedures allow for this "affirmative statement" to be, *inter alia*, in the form of a "duly authorized letter" from the Commission.<sup>7</sup> **Attachment 2** of Nextel Partners' Petition includes a copy of such a "duly authorized letter" from James J. McNulty, Secretary of the PAPUC, setting forth the PAPUC's determination that it will not exercise jurisdiction over Nextel Partners for purposes of making the ETC designation. The Commission has found in other proceedings that this type of letter, along with a brief explanation in the body of the petition, is an adequate basis for establishing federal jurisdiction.<sup>8</sup>

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<sup>6</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, 15 FCC Rcd 12208 at ¶¶ 112-113 (2000).

<sup>7</sup> *See id.* at ¶ 113; *see also* Public Notice, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (December 29, 1997) ("*Procedures for FCC designation of Eligible Telecommunications Carriers*").

<sup>8</sup> *See, e.g., In the Matter of the Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order in CC Docket No. 96-45, DA 02-3181 (rel. November 26, 2002) at ¶ 7.

Accordingly Nextel Partners' Petition is correctly before this Commission for decision.<sup>9</sup>

## **II. Nextel Partners Provides, or Will Upon Designation Provide, All of the Supported Services and Functionalities Required of ETCs**

### **A. Nextel Partners has Provided Sufficient Evidence in Support of its Petition**

PTA and Commonwealth attempt in their comments to impose numerous additional requirements that are not required by law, and then call into question the completeness of Nextel Partners' Petition for not including these additional showings. The notion that Nextel Partners must be held to a standard stricter, and more inclusive, than that required by law of other ETC applicants is inherently fallacious. Nextel Partners' Petition must be reviewed by this Commission based on the basis of whether it makes the legally required showings, and not on whether it complies with the additional requirements proposed by PTA and Commonwealth.

Nextel Partners' Petition as submitted to the Commission meets each of the requirements set forth in the *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*.<sup>10</sup> In this Public Notice the Commission sets forth four elements of an ETC designation petition<sup>11</sup> and an additional

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<sup>9</sup> The only other commenter in this proceeding, Commonwealth Telecom, has conceded that Nextel Partners has met the jurisdictional threshold for consideration of its Petition by the Commission. See Commonwealth Comments at 2.

<sup>10</sup> *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (December 29, 1997) (“*Procedures for FCC designation of Eligible Telecommunications Carriers*”).

<sup>11</sup> Specifically, Nextel Partners showed:

1. That it is not subject to the jurisdiction of the PAPUC;
2. That it will provide all of the services designated for support by the Commission pursuant to Section 254(c) of the Act;
3. That it will provide the supported services over its own facilities; and
4. How it will advertise the availability of the supported services using media of general distribution.

requirement of a “description of the geographic service area” if the petitioner is not a rural telephone company. Nextel Partners has provided the requisite certifications, a description of its advertising practices and a description of the areas for which it seeks ETC designation.

**B. Nextel Partners Will Offer Supported Services Throughout the Service Area for which it Seeks Designation**

PTA argues that Nextel Partners’ petition cannot be granted because its services are not on parity with those offered by wireline incumbent local exchange carriers (“ILECs”).<sup>12</sup> In particular, PTA claims that Nextel Partners must offer Equal Access and Local Number Portability (“LNP”) prior to designation.

PTA is incorrect. Nextel Partners must by law provide all universal service supported services required by the Commission’s rules, but is not required to provide or prove that it can or will provide additional services such as Equal Access or LNP: these services do not appear on the list of services required to be provided by ETCs. In response to opposing parties demanding additional eligibility requirements in the Western Wireless Wyoming proceeding, the Commission held, “we reject the contention...that it is necessary to adopt eligibility criteria beyond those set forth in Section 214(e) to prevent competitive carriers from ... providing substandard service.”<sup>13</sup>

Nor is Nextel Partners required to provide all of the USF supported services *before* it is designated as an ETC. In fact, this would be impossible, since only an ETC can participate in

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<sup>12</sup> PTA Comments at 6-8.

<sup>13</sup> Memorandum Opinion and Order, *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, DA 00-2896 (rel. Dec. 22, 2000) ¶ 12 (“*Western Wireless Wyoming Petition*”).

the Lifeline and Link-Up programs.<sup>14</sup> As a consequence, PTA’s insistence that “Nextel must demonstrate that it provides *all* of those services at *all* locations where it desired to be designated as an ETC”<sup>15</sup> is without merit. PTA’s insistence that the failure to hold Nextel Partners to this higher standard “would give Nextel an unfair competitive edge in that it would have access to Universal Service funding without providing the required services” also lacks merit.<sup>16</sup> PTA’s constituents are wireline incumbent LECs,<sup>17</sup> and the suggestion that a relatively new entrant such as Nextel Partners would have “an unfair competitive edge” is at best an unsupported speculation that is not entitled to credence. In any event, such a speculation does not form a sufficient basis for imposition of higher standard of review for Nextel Partners’ Petition than that afforded by applicable law.

Nextel Partners’ obligation as a petitioner for ETC status is to represent that, upon receipt of USF funding, it will offer USF supported services throughout its service area. Nextel has made this showing in its Petition.

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<sup>14</sup> See generally 47 C.F.R. Part 54, Subpart E (Universal Service Support for Low Income Consumers). In fact, PTA attempts to claim that Nextel Partners’ Petition must be denied on the basis that Nextel Partners has conceded that it does not presently provide Lifeline, Link-Up or toll blocking. PTA Comments at 7. But this argument is immaterial, since these supported services need only be offered *after* designation as an ETC, upon receipt of USF support. The toll blocking service is intended to benefit low income consumers enrolled in the Lifeline/Link-Up program, and need not be provided before Nextel Partners is a Lifeline participant.

<sup>15</sup> PTA Comments at 7.

<sup>16</sup> PTA Comments at 7.

<sup>17</sup> See PTA Comments at n.1.

**C. Nextel Need Not Provide Ubiquitous Service to its Designated Service Area in Advance of Designation as an ETC**

Both commenters complain that Nextel Partners' service coverage in Pennsylvania is not sufficient to warrant the grant of its Petition. These arguments are asserted in a number of different forms, but they are all at base the same argument: the contention that Nextel Partners must cover all portions of its designated service area prior to being granted ETC status. This contention has already been considered and rejected by this Commission.

**1. PTA's Assertion that Nextel Partners Must Provide Ubiquitous Service Coverage Is Erroneous**

Contrary to PTA's assertions,<sup>18</sup> Nextel Partners is *not* required to provide ubiquitous service as a precondition for designation as an ETC. In addition, Nextel Partners is not required to have in place in advance of designation as an ETC the necessary infrastructure to provide service to *all* potential rural customers in its designated service area.<sup>19</sup> Even many rural ILECs would fail to meet this overly burdensome standard. The purpose of the fund is not merely to replace sunk investment costs, but rather to promote the growth of telecommunications services in high cost areas.<sup>20</sup> To require ubiquitous service capacity of a telecommunications carrier prior to ETC designation is to misconstrue the purpose of the fund and would prevent the designation

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<sup>18</sup> PTA Comments at 4.

<sup>19</sup> See Memorandum Opinion and Order, *In the Matter of the Federal State Joint Board on Universal Service; 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, DA 02-3181 at ¶ 16.. (rel. Nov. 26 2002).

<sup>20</sup> See Declaratory Ruling, *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. No. 96-45 (rel. July 11, 2002), ¶¶ 12, 14 (“*South Dakota Order*”).

of any additional ETCs.<sup>21</sup>

In fact, the other commenter in this proceeding, Commonwealth, concedes at one point that it is not necessary for Nextel Partners to provide ubiquitous coverage of its service area prior to ETC designation -- and even goes so far as to cite to the Commission's *South Dakota Order* for this concession.<sup>22</sup>

In the *South Dakota Order*, the Commission preempted an order of the South Dakota Public Utilities Commission, finding that:

requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the new entrant to provide intrastate or interstate telecommunications service.<sup>23</sup>

In reaching this conclusion, the Commission explained,

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 support ... 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.<sup>24</sup>

In light of the above, the fact that Nextel Partners currently does not provide service over every inch of the service area for which it seeks ETC designation is simply not at issue in this

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<sup>21</sup> *Id.* at ¶¶ 10, 12.

<sup>22</sup> See Commonwealth Comments at 4 (“The Commission has recognized that an ETC applicant need not demonstrate that it can provide ubiquitous coverage at the time of its application, if it demonstrates both “capability and commitment” to provide the supported services once it receives high-cost support.”) (citing *Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 155 FCC Rcd 15168 at ¶¶ 17, 24).

<sup>23</sup> *South Dakota Order* at ¶ 10.

<sup>24</sup> *Id.* at ¶ 13.

proceeding. Accordingly, PTA's attempt to impose a "ubiquitous coverage" precondition on Nextel Partners' Petition lacks merit.

In spite of PTA's assertions, Nextel Partners already provides wireless telecommunications service in much of rural Pennsylvania<sup>25</sup> and, as required of common carriers by the Act, will furnish "communications services upon reasonable request"<sup>26</sup> within the areas for which it seeks designation as an ETC. Universal service funding will provide economic support for the expansion of Nextel Partners' wireless network to provide quality service in high cost areas where it is licensed. Nextel Partners has not requested any modification of study area boundaries and will use universal service funds in an ongoing effort to provide wireless services throughout the service area for which it seeks designation as an ETC. This ongoing process of build out into rural areas with the support of universal service funds is in direct alignment with the purpose of the fund.

**2. Nextel Partners Already Covers Most of Commonwealth's Study Area, and has the Intent and Ability to Provide Service Throughout the Area Upon Reasonable Request.**

While conceding that ubiquitous coverage is not required by law, and that all an ETC applicant need demonstrate is the "capability and commitment to provide the supported services once it receives high-cost support,"<sup>27</sup> Commonwealth nevertheless argues that Nextel Partners' coverage falls short of that required for ETC designation. To this end, Commonwealth claims

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<sup>25</sup> The Commission's ULS database contains a record of the many 800 MHz Economic Area ("EA") and site-based licenses pursuant to which Nextel Partners offers its services in Pennsylvania. The licenses are held by wholly-owned subsidiaries of Nextel Partners Operating Corp., which also owns 100% of NPCR, Inc. Lists of the call signs associated with these licenses are attached as **Exhibit 1** hereto.

<sup>26</sup> 47 U.S.C. § 201(a).

<sup>27</sup> Commonwealth Comments at 4.

that since “Nextel claims it already has facilities in place to provide the supported services, and makes no commitment to upgrade its network,” if “Nextel’s existing infrastructure cannot provide service in all of [Commonwealth’s] study area,” the Commission must deny Nextel Partners’ Petition. Having set up this argumentative framework, Commonwealth goes on to claim, by reference to Nextel Partners’ coverage map, that there are portions of Commonwealth’s study area that do not presently receive service. Thus, Commonwealth concludes, since Nextel Partners does not presently cover all of Commonwealth’s study area, Nextel Partners’ Petition must be denied.

Despite Commonwealth’s seeming willingness to concede that ubiquitous coverage is not required of an ETC applicant, Commonwealth has ignored its own concession in order to re-frame the same “ubiquitous coverage” argument that it has admitted lacks merit. The crucial flaw in Commonwealth’s reasoning is that Commonwealth jumps to the unwarranted and unsupported conclusion that Nextel Partners’ system in Pennsylvania will be static, and will not be maintained and upgraded in response to receipt of USF high cost support funding. The only basis for Commonwealth’s prediction of this future scenario is that Nextel Partners did not provide details in its Petition as to *how* it would upgrade and extend its network infrastructure in Pennsylvania over time. But details pertaining to the future expansion of Nextel Partners’ network infrastructure are not a required part of Nextel Partner’s ETC Petition – and therefore nothing whatsoever can be concluded from the fact that Nextel Partners did not include them in the Petition.<sup>28</sup> Any inference that Nextel Partners does *not* intend to expand and upgrade its network is mere speculation of the most self-serving sort.

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<sup>28</sup> See 47 U.S.C. § 214(e)(6); see also 47 C.F.R. § 54.201 and *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the*

While speculating about the future of Nextel Partners' infrastructure in Pennsylvania, Commonwealth lost sight of some essential *present* facts. First, Nextel Partners is *already* doing business in all of the study areas for which it seeks designation, and has financed the build out of its infrastructure without any high cost support – so it is clear that these areas are a matter of strategic business interest for Nextel Partners. The receipt of high cost support will facilitate further expansion and elaboration of Nextel Partners' network.

Second, Nextel Partners is required by applicable law to utilize its universal service support funds received in a manner consistent with the Act once it is designated as an ETC – *only for* the provision, maintenance, and upgrading of facilities and services for which the support is intended -- and in fact, Nextel Partners has already certified to both the Commission and to USAC that it will meet this requirement.<sup>29</sup>

Third, as noted above, Nextel Partners' obligation with regard to providing service in its designated service area upon receipt of USF funding will be to provide service upon a "reasonable request."<sup>30</sup> This does not mean that Nextel Partners must prove that it *currently* provides service to every square inch of Commonwealth's study area, or any other study area for which it seeks ETC designation.

Finally, as clearly shown by the more detailed coverage map of Commonwealth's study area attached as **Exhibit 3** hereto, Nextel covers the lion's share of the study area already, and

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*Communications Act*, Public Notice, FCC 97-419 (December 29, 1997) ("*Procedures for FCC designation of Eligible Telecommunications Carriers*").

<sup>29</sup> See Petition, **Attachment 4**. Nextel also recently filed its June 30, 2003 annual certification with USAC and with this Commission concerning Interstate Common Line Support, Long Term Support and Interstate Access Support (see **Exhibit 2** hereto).

<sup>30</sup> *South Dakota Order* at ¶ 17.

has at least some coverage throughout nearly all of the study area. Nextel Partners submits that this is a significant starting point for the continued development of its infrastructure and customer base in Commonwealth's study area – Nextel Partners' ability to provide additional service, and its "reach" throughout Commonwealth's study area – and other designated study areas -- will be enhanced and facilitated by the receipt of high cost USF funding.

PTA's arguments (PTA Comments at 6) that (i) it has input three zip codes allegedly served by Pymatuning Independent Telephone Company and one zip code served by Venus Telephone Corporation into Nextel Partners' website, and was unable to confirm service coverage for each of those zip codes and (ii) Nextel Partners' coverage appears to follow highway corridors are simply restatements of the failed "ubiquitous coverage" argument, and they lack merit for the same reasons. Nextel Partners is building out its facilities in Pennsylvania in accordance with the requirements of the licenses pursuant to which it provides service, and Nextel Partners has already provided a current map showing its coverage of the study areas for which it requests ETC designation. Nextel Partners is not required by law to cover every square inch of every study area for which it seeks designation as a precondition to obtaining ETC status.

Nextel Partners' existing coverage plan has been designed and implemented based on customer expectations, demands and feedback. Receiving and meeting customer expectations is an essential element of Nextel Partners' success in the in the competitive marketplace for wireless services. Since Nextel Partners, unlike the wireline ILECs, provides mobile communications services, a predominant expectation of Nextel Partners' customers is that they will be able to use their phones when traveling on the highways -- portions of the rural study areas that are not comparably served by the wireline carrier.

In sum, despite the various coverage arguments asserted by Commonwealth and PTA Nextel Partners clearly has made a reasonable showing that it has the requisite “capability and commitment” to provide service throughout its designated service area.<sup>31</sup>

### **III. Designating Nextel as an ETC for the Rural Telephone Company Service Areas in Pennsylvania Will Serve the Public Interest**

A necessary part of Nextel Partners’ proposal to be designated as an ETC in the study areas of rural telephone companies in Pennsylvania is a showing that such a designation is in the public interest.<sup>32</sup> As demonstrated in Nextel Partners’ Petition, Nextel Partners’ operation as an ETC will unquestionably benefit Pennsylvania telecommunications users – these *consumers*, and not the incumbent rural LECs themselves, are the focus of the public interest question. Rural customers in Pennsylvania should not be denied the opportunity to choose a telecommunications carrier, to access new technologies available on the market, and to select from innovative services that are available to urban telecommunications users. As observed by the Texas Public Utility Commission in designating a wireless applicant (“WWC”) an ETC in a requested rural telephone company service area:

Designating WWC as an ETC . . . will afford people both choice for a local exchange carrier and increased access to enhanced services. As a result, customers in Texas are more likely to have lower prices, higher quality, and the rapid deployment of new telecommunications technologies. In addition, the Commission is unwavering in its support of a simple proposition: *Rural Texans are not second class citizens and should not be deprived of competitive alternatives or access to new technologies.* Finally, no citizen should be deprived

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<sup>31</sup> *Memorandum Opinion and Order, In the Matter of Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317 at ¶ 15 (rel. Dec. 3, 2002).

<sup>32</sup> 47 U.S.C. § 214(e)(6) (“Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.”).

of existing competitive opportunities as a result of implementing the Federal Telecommunications Act of 1996[.]<sup>33</sup>

Designation of Nextel Partners as an ETC will provide a valuable enhancement to the existing telecommunications regime in these areas. Nextel Partners provides a larger local calling area than the ILECs, the benefits of mobile telephony service and, where requested by the PSAP, GPS location assistance for customers calling 911.<sup>34</sup> These benefits will be expanded and made available to more rural customers as a result of Nextel Partners' ETC designation. The Commission has determined that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>35</sup> Despite the commenters' attempts in this proceeding seek to call this determination into question by interposing numerous vague and generalized arguments,<sup>36</sup> they conspicuously fail to show that the designation of Nextel Partners as an ETC

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<sup>33</sup> *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*, PUC Docket No. 22289 at 2 (Texas Public Utility Commission 2000) (emphasis supplied).

<sup>34</sup> Nextel Partners Petition at 7.

<sup>35</sup> Memorandum Opinion and Order, *Western Wireless Wyoming Petition*, CC Docket No. 96-45, DA 00-2896 at ¶ 15 (rel. Dec. 22, 2000).

<sup>36</sup> For example, PTA contends severally that (i) Nextel Partners must be required to provide LNP before designation (PTA Comments at 8); (ii) Nextel Partners cannot provide a “valuable alternative” to Pennsylvanians if it does not serve all of them presently (*Id.*); (iii) if the USF grows too large, LECs may not be able to invest in their networks (*Id.* at 8-9); (iv) Pennsylvania LECs have already invested heavily in their networks (*Id.* at 9); (v) the USF should not be used to “subsidize competitors' business plans” (*Id.* at 10).

Likewise, Commonwealth (i) notes that other wireless carriers are already providing service in its study area (Commonwealth Comments at 5); (ii) presents various statistics concerning the modernization of its facilities; (iii) Nextel has not made “specific commitments” similar to those made in Commonwealth's “Network Modernization Plan,” (Commonwealth Comments at 7); (iv) Nextel Partners has not specified a “causal relationship” between its USF funding and

in the specified study areas would *not* bring the benefits of increased customer choice, innovative services, and new technologies to consumers.

Pennsylvania consumers will benefit directly as a result of the USF support gained by Nextel Partners in Pennsylvania, as well as by Nextel Partners' many valuable and innovative services. Nextel Partners is the *only* CMRS carrier that offers "Nextel Direct Connect Service," a significant technology that allows the consumer to use his or her wireless phone as a "walkie-talkie" on a push to talk basis to communicate with other Nextel Partners users without consuming cellular airtime. Nextel Partners' service also includes many "vertical switch features" such as Call Forwarding, Three-Way Calling and Call Waiting as an inherent part of its service: these are features for which wireline carriers typically charge extra. Moreover, Nextel Partners offers a variety of different rates and service plans, some of which include long distance, data messaging, voicemail, caller ID and other valuable optional services.

Commonwealth asserts in its comments that some other, unnamed wireless carriers offer services in "much of" its study area., and calls into question the need for Nextel Partners to be designated an ETC. However, what Commonwealth conveniently fails to mention is that none of these wireless carriers that purportedly offer services in a portion of Commonwealth's study area has been designated an ETC. No existing wireless carrier doing business in Commonwealth's study area receives high cost funding that would enable it to compete with Commonwealth on a meaningful basis, and no existing wireless carrier offers the USF supported services to consumers in Commonwealth's service territory. Even if there were other wireless ETCs in Commonwealth's territories, Nextel submits that the addition of more genuine competition by

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provision of service to government agencies. (Commonwealth Comments at 7). These arguments are all immaterial in this context and do not bear further discussion.

grant of its Petition would nevertheless benefit consumers, in terms of innovation, pricing, choice and range of services.

Although the commenters have attempted to undercut Nextel Partners' representations concerning the public interest benefits to Pennsylvania, they have not even attempted to claim that the grant of the instant Petition will cause any cognizable detriment to the public or harm to the rural carrier itself. Nor does Commonwealth claim that it will surrender its own ETC designation in the face of competition from Nextel Partners, and PTA certainly does not make any such suggestion on behalf of its members.

Finally, Commonwealth contends (pages 5-6) that there is no need to designate Nextel Partners as an ETC, because Nextel Partners is already serving many of the rural areas in Pennsylvania without cost support. Even though Nextel Partners has to date expended tremendous resources, and exerted significant efforts in order to provide state of the art service to rural Pennsylvania customers, it should not be assumed as a matter of course that increased investment in high-cost areas is possible without universal service support. The contention that Nextel Partners should not receive support because it has already dedicated substantial resources and effort to serve rural customers is absurd: the fact that Nextel Partners has already installed infrastructure to serve high cost areas in Pennsylvania is a clear demonstration of its commitment to provide service in those areas, and reinforces Nextel Partners' entitlement to receive the same high cost support already received by the incumbents in those areas.<sup>37</sup>

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<sup>37</sup> See *South Dakota Order* at ¶¶ 12-14 ("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 support.")

**IV. Conclusion**

Because the requirements for eligibility for designation as an eligible telecommunications carrier have been met, Nextel Partners requests that the Commission promptly grant Nextel Partners' Petition.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS

By \_\_\_\_\_ [signed]

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Ronald J. Jarvis  
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Washington, DC 20007  
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Counsel for Nextel Partners

Date: July 14, 2003

**CERTIFICATE OF SERVICE**

The undersigned, an attorney in the law firm of Catalano & Plache, PLLC hereby certifies that on this 14th day of July, 2003, a true and correct photocopy of the foregoing “Reply Comments” was sent to the following persons:

Richard Smith  
Accounting Policy Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5-A660  
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Paul Garnett, Esq.  
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Telecommunications Access Policy Division  
Federal Communications Commission  
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Room 4-C-405  
Washington, DC 20554

Sheryl Todd (3 copies)  
Wireline Competition Bureau  
Telecommunications Access Policy Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5-B-540  
Washington, DC 20554

\_\_\_\_\_  
[Signed]  
Ronald J. Jarvis

**EXHIBIT 1**

1. EA Licenses Pursuant to Which Nextel Partners Provides Service in Pennsylvania

callsign	market_name	entity_name
WPLM569	State College, PA	Nextel WIP Expansion Two, Inc.
WPLM570	State College, PA	Nextel WIP Expansion Two, Inc.
WPLM571	State College, PA	Nextel WIP Expansion Two, Inc.
WPQS981	Pittsburgh, PA-WV	Nextel WIP Expansion Two, Inc.
WPQS982	Pittsburgh, PA-WV	Nextel WIP Expansion Two, Inc.
WPQS983	Pittsburgh, PA-WV	Nextel WIP Expansion Two, Inc.
WPLM563	Rochester, NY-PA	NEXTEL WIP LICENSE CORP.
WPLM564	Rochester, NY-PA	NEXTEL WIP LICENSE CORP.
WPLM565	Rochester, NY-PA	NEXTEL WIP LICENSE CORP.
WPLM566	Buffalo-Niagara Falls, NY-PA	NEXTEL WIP LICENSE CORP.
WPLM567	Buffalo-Niagara Falls, NY-PA	NEXTEL WIP LICENSE CORP.
WPLM568	Buffalo-Niagara Falls, NY-PA	NEXTEL WIP LICENSE CORP.
WPOI279	Syracuse, NY-PA	NEXTEL WIP LICENSE CORP.
WPOI280	Syracuse, NY-PA	NEXTEL WIP LICENSE CORP.
WPOI281	Syracuse, NY-PA	NEXTEL WIP LICENSE CORP.
WPOI380	Erie, PA	NEXTEL WIP LICENSE CORP.
WPOI381	Erie, PA	NEXTEL WIP LICENSE CORP.
WPOI382	Erie, PA	NEXTEL WIP LICENSE CORP.

2. Site Licenses Pursuant to Which Nextel Partners Provides Service in Pennsylvania

Callsign	Licensee
KNBB709	Nextel WIP License Corp.
KNBX840	Nextel WIP License Corp.
KNCD410	Nextel WIP License Corp.
KNGY766	Nextel WIP License Corp.
KNHH557	Nextel WIP License Corp.
KNNH845	Nextel WIP Expansion Two, Inc.
KNNP948	Nextel WIP License Corp.
KNRP633	Nextel WIP License Corp.
KNRP644	Nextel WIP License Corp.
KNRP658	Nextel WIP License Corp.
KNRP912	Nextel WIP License Corp.
KNRQ232	Nextel WIP License Corp.
KNRQ818	Nextel WIP License Corp.
KNRS986	Nextel WIP Expansion Two, Inc.
KNRS996	Nextel WIP License Corp.
KNRT348	Nextel WIP License Corp.
KNRT350	Nextel WIP License Corp.
KNRT528	Nextel WIP License Corp.
KNRT681	Nextel WIP License Corp.
KNRT704	Nextel WIP License Corp.
KNRU311	Nextel WIP Expansion Two, Inc.
KNRU494	Nextel WIP Expansion Two, Inc.
KNRU506	Nextel WIP License Corp.
KNRV352	Nextel WIP License Corp.
KNRV353	Nextel WIP License Corp.
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WNAU574	Nextel WIP License Corp.
WNCE576	Nextel WIP License Corp.
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WNJI691	Nextel WIP Expansion Two, Inc.
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WNMD371	Nextel WIP License Corp.
WNMD382	Nextel WIP License Corp.
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WNNW276	Nextel WIP License Corp.
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WNPS579	Nextel WIP License Corp.

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WNQY322	Nextel WIP License Corp.
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WPWT828	Nextel WIP License Corp.
WPWT855	Nextel WIP License Corp.
WPWT856	Nextel WIP License Corp.
WPWT857	Nextel WIP License Corp.
WPWT859	Nextel WIP License Corp.
WPWW487	Nextel WIP License Corp.
WPWW489	Nextel WIP License Corp.
WPWW895	Nextel WIP License Corp.
WPXA246	NEXTEL WIP LICENSE CORP.
WPXA248	NEXTEL WIP LICENSE CORP.

WPXA249	NEXTEL WIP LICENSE CORP.
WPXA250	NEXTEL WIP LICENSE CORP.
WPXS812	Nextel WIP License Corp.
WPXS815	Nextel WIP License Corp.
WPXS816	Nextel WIP License Corp.
WPXS820	Nextel WIP License Corp.
WPXS823	Nextel WIP License Corp.
WPXU597	Nextel WIP License Corp.
WQP237	Nextel WIP License Corp.
WSB480	Nextel WIP License Corp.

**EXHIBIT 2**

June 27, 2003

Irene M. Flannery  
VP—High Cost and Low Income Division  
Universal Service Administrative Company  
2120 L Street, NW, Suite 600  
Washington, DC 20037

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

Re: CC Docket No. 96-45  
**Interstate Access Support - IAS**  
Annual Certification Filing

This is to certify that NPCR, Inc., d/b/a Nextel Partners, will use its Universal Service Interstate Access Support - IAS only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the following study areas in the **State of Pennsylvania**:

<u>SAC</u>	<u>Company Name</u>	<u>State</u>
170145	Bentleyville Telco	PA
170149	Frontier-Breezewood	PA
170151	Buffalo Valley	PA
170152	Frontier Canton	PA
170161	Commonwealth	PA
170162	Conestoga	PA
170165	Denver and Ephrata	PA
170175	Ironton	PA
170177	Lackawaxen	PA
170179	Laurel Highland	PA
170183	Mahanoy and Mahantongo	PA
170185	Marianna-Scenery	PA
170191	North Eastern PA	PA
170192	North Penn Telco	PA
170195	Armstrong Tel North	PA
170196	Palmerton	PA
170197	Pennsylvania Telco	PA
170200	Pymatuning Ind Telco	PA
170204	South Canaan	PA
170206	Sugar Valley	PA
170210	Venus	PA
170277	West Side	PA



John Shoji, Director of Finance  
NPCR, Inc. d/b/a Nextel Partners  
4500 Carillon Point  
Kirkland, WA 98033  
(425) 576-3692

Date: 6/27/03

June 27, 2003

Irene M. Flannery  
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Marlene H. Dortch  
Office of the Secretary  
Federal Communication Commission  
445 – 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CC Docket No. 96-45  
**Interstate Common Line Support and Long Term Support-ICLS**  
Annual Certification Filing

This is to certify that NPCR, Inc., d/b/a Nextel Partners, will use its Interstate Common Line Support and Long Term Support-ICLS only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the study areas located in the **State of Pennsylvania** listed below:

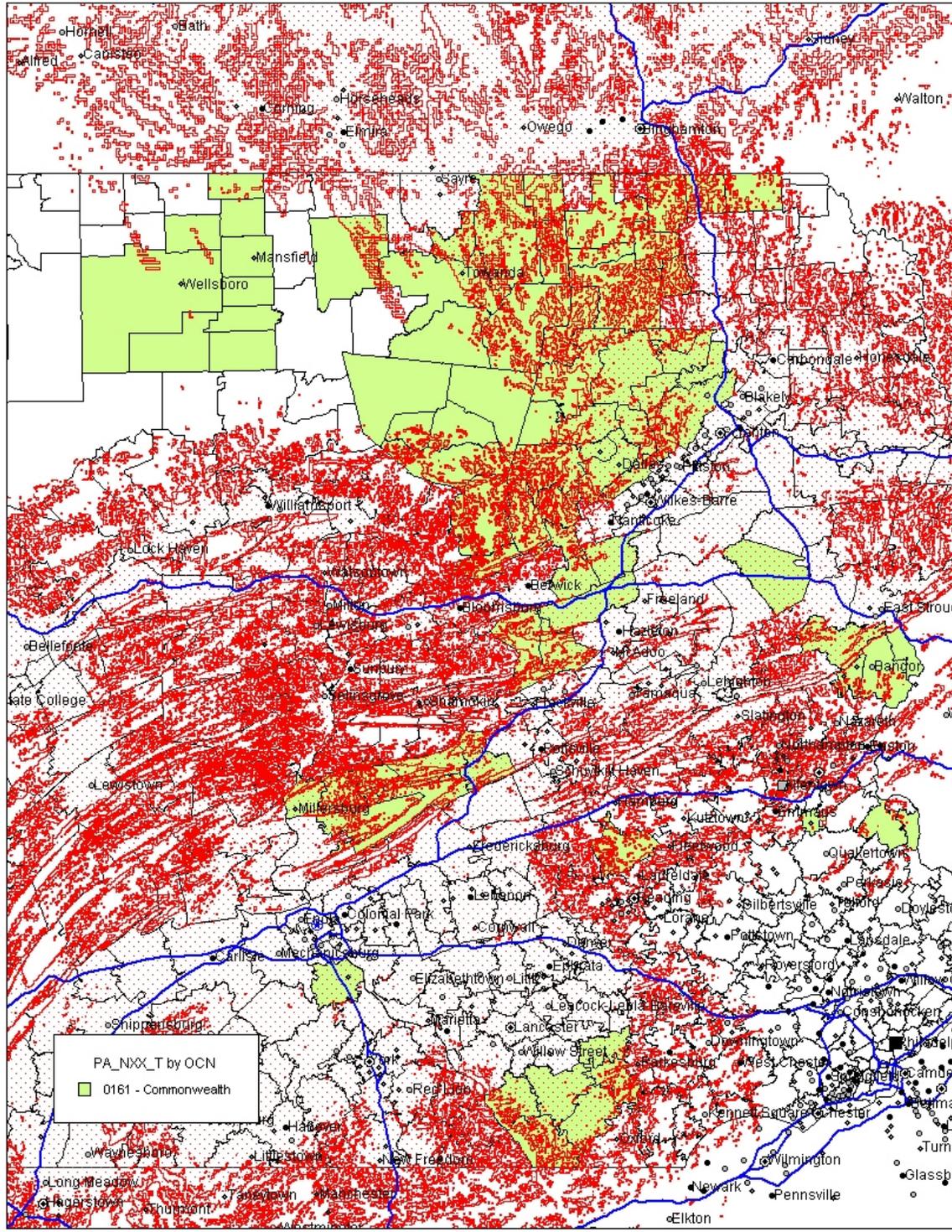
<u>SAC</u>	<u>Company Name</u>	<u>State</u>
170145	Bentleyville Telco	PA
170149	Frontier-Breezewood	PA
170151	Buffalo Valley	PA
170152	Frontier Canton	PA
170161	Commonwealth	PA
170162	Conestoga	PA
170165	Denver and Ephrata	PA
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170177	Lackawaxen	PA
170179	Laurel Highland	PA
170183	Mahanoy and Mahantongo	PA
170185	Marianna-Scenery	PA
170191	North Eastern PA	PA
170192	North Penn Telco	PA
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170196	Palmerton	PA
170197	Pennsylvania Telco	PA
170200	Pymatuning Ind Telco	PA
170204	South Canaan	PA
170206	Sugar Valley	PA
170210	Venus	PA
170277	West Side	PA



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Date: 6/27/03

**EXHIBIT 3**



**Nextel Partners' Coverage of Commonwealth Telephone Study Area in Pennsylvania**