

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
NPCR, Inc. d/b/a Nextel Partners)	CC Docket No. 96-45
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia)	

**COMMENTS OF
THE GEORGIA TELEPHONE ASSOCIATION**

The local exchange carrier (“LEC”) members of the Georgia Telephone Association (“GTA”) hereby respond to the Commission’s invitation to comment on the Petition of NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”) to be designated as an Eligible Telecommunications Carrier (“ETC”) in certain designated areas in Georgia (“Petition”).¹ The GTA is comprised of thirty LECs providing service throughout the state of Georgia.

This matter is before the Commission because the Georgia Public Service Commission has determined that it lacks jurisdiction to designate Nextel Partners, a commercial mobile radio service (“CMRS”) carrier, as an ETC in Georgia.

I. Introduction

Nextel Partners has filed a petition to be designated as an ETC in areas in Georgia where it is licensed to provide CMRS. The areas for which it requests designation include both wire

¹ See *Wireline Competition Bureau Seeks Comment on NPCR, Inc. D/B/A Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia: Public Notice*, DA 03-2621 (rel. Aug. 8, 2003).

centers of BellSouth, a non-rural incumbent LEC, and study areas of fifteen incumbent rural telephone companies (“RTCs”) as defined in Section 153(37) of the Communications Act of 1934, as amended (the “Act”). Because Nextel Partners seeks ETC designation in these RTCs’ study areas, it must demonstrate that it meets the minimum criteria of Section 214(e)(1), and that designating it as an ETC in each RTC study area “is in the public interest.”² As demonstrated herein, however, designating Nextel Partners as an ETC in these RTCs’ study areas would be contrary to the public interest. Further, the record is not clear as to whether Nextel Partners actually serves the “entirety” of each rural telephone study area as it claims in its Petition.

II. Designation Of Nextel Partners As An ETC In the RTCs’ Study Areas Is Not In The Public Interest

A. Nextel Partners’ Public Interest Arguments Conflict With Section 214(e)(2)

Nextel Partners’ public interest showing consists of the same unsubstantiated arguments as many other CMRS ETC applicants. Reduced to their most basic elements, the arguments are that designating additional ETCs in an RTC’s study area somehow creates new competition and that competition presumably leads to beneficial competitive marketplace effects; therefore, designating Nextel Partners as an additional ETC in the RTCs’ study areas must be in the public interest.

These arguments substantially negate any meaningful application of the public interest test contained in Section 214(e)(2); they are conclusory and circular, suggesting that additional ETCs in RTCs’ study areas must always be in the public interest. If merely increasing

² 47 U.S.C. § 214(e)(2).

competition were enough to satisfy the public interest test, the Congressional limitation on the designation of additional ETCs in RTCs' study areas is an empty directive, and Congress would have applied the same standard to both rural and non-rural areas. The automatic conclusion that is at the heart of the CMRS providers' arguments essentially writes the public interest provision for rural telephone company areas out of the Act.

Congress, however, by adopting the public interest test and delegating to states the discretion to determine whether and how many ETCs to designate in RTCs' study areas, recognized that it does not always make sense to designate additional ETCs in such areas. Commissioners Abernathy and Adelstein have already raised questions regarding the manner in which the review of the public interest issues has been undertaken:

[W]e are concerned that the ETC designation process – and in particular the public interest analysis – has been conducted in an inconsistent and sometimes insufficiently rigorous manner. Providing federal guidance on these issues will afford regulatory certainty to competitive ETCs, as well as incumbent LECs. It will also help stabilize the funding mechanism.”³

In light of these observations, the Commission should use this opportunity to determine and develop a meaningful public interest analysis to be applied to ongoing ETC designation considerations. In any event, the Commission should not continue simply to accept the generalized and blanket public interest arguments of Nextel Partners.

³ See *In the Matter of Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, CC Docket No. 96-45, FCC 03-170 (rel. July 14, 2003) (“Order”), *Joint Statement of Commissioners Kathleen Q. Abernathy and Jonathan S. Adelstein at 2.*

B. Designating Nextel Partners As An ETC Will Not Increase Competition

Nextel Partners has been providing CMRS within its licensed service area for years, and the RTCs' customers within Nextel Partners' license areas already have access to Nextel Partners' or other CMRS carriers' services. Regardless of what public interest test is applied, Nextel Partners obviously is not a new entrant, and deeming it "eligible" for universal service funds ("USF") will not somehow transform its service into a new, competing service. Therefore, the benefits, whether real or not, that may potentially flow from competitive entry will not arise by designating Nextel Partners as an ETC. Overwhelmingly, rural users do not accept or perceive CMRS as a replacement to wireline service. The service characteristics of wireline and wireless are not similar enough for there to be exact market competitive reactions among carriers. Accordingly, consumers will not experience the hypothetical benefits that Nextel Partners claims will result from designating it as an ETC in the RTCs' study areas.

C. Designating Nextel Partners As An ETC Will Result In Funding Inconsistent with Universal Service Goals

Under current rules, Nextel Partners, if designated as an ETC, would receive USF that is based on averaged costs of the wireline LEC to serve the entire study area. The harm in this, of course, is that the second ETC receives USF that is not related to its needs, costs, or any necessary and sufficient amounts of funding to fulfill some universal service objective where it provides wireless service.

Whether this is called cream skimming, arbitrage, gaming, or something else, the result is an assault on the public interest goals. USF is aimed at defraying the costs of maintaining a network to make service universally available within a study area; it should not be redirected to

any other purpose. To direct USF funding to carriers in a manner not related to need or costs only weakens the program to the detriment of the overall goals.

III. Nextel Partners Fails to Substantiate its Claim that it Serves the Entirety of Each Rural Telephone Study Area

In its Petition, Nextel Partners claims that it “provides service to the entirety of each rural telephone study area and non-rural ILEC wire center set forth on Attachment 1.”⁴ However, there does not appear to be any evidence demonstrating that it holds licenses for the entirety of all of these areas, and, Nextel Partners does not specify the locations of its towers. Despite its claim, one would expect a high likelihood that Nextel Partners does not provide continuous mobile phone service across these vast rural areas. The record is insufficient to allow for comment on its ability to serve the entire RTC study areas either currently or in the future. The ability to provide service across the entire service area is dependent on its current coverage and its ability to obtain future tower sites.

Further, the map that is provided does not appear to substantiate the petitioner’s claim. According to the petition, the map “reflects the result of a conservative radio frequency propagation analysis assuming a three-watt wireless phone at –105 dB.”⁵ No information is provided as to the quality of service that is obtained at this level of dB by subscribers using three-watt phones or the number of subscribers that actually use three-watt phones as compared

⁴ Petition at 6 (emphasis in original).

⁵ *Id.* at n. 7.

with those that use lower watt, handheld phones, which likely would not receive this level of coverage.

IV. Proposed Rule Changes Could Alter The Outcome Of This Proceeding

Proposed changes to the USF mechanism and the qualifications for designation as an ETC could result in Nextel Partners no longer meeting the Section 214(e)(1) minimum criteria for being an ETC, and other changes could affect whether designating Nextel Partners as an ETC is in the public interest.⁶ Of greatest concern to the GTA, however, are proposals that would reduce the amount of USF that its member companies would receive when additional ETCs are designated in their study areas. Such potential changes, especially in conjunction with the loss of access revenues that the member companies are already experiencing as a result of customers using their mobile phones for toll calls, would be detrimental to the continued provision of universal service in rural areas and the continued commitment to further capital investment supporting the provision of advanced services.

CMRS carriers present a particular concern in this regard because wireless customers generally have both a wireline and a wireless phone. USF is aimed at defraying the costs of the network. The costs of those networks do not change appreciably with the advent of another

⁶ See, e.g., Order at paras. 33-34 (Commission determining to consider the equal access issue as part of the portability proceeding and recognizing “that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future”); *id.*, *Statement of Commissioner Michael J. Copps* (“I remain concerned that competitive eligible telecommunications carriers not offering equal access may deprive rural consumers of choice, quality and the full benefits of competition”); *id.*, *Statement of Commissioner Kevin J. Martin* (“I support inclusion of equal access in the list of supported services”).

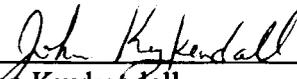
ETC. Accordingly, RTCs could find themselves losing USF while still being required to maintain a network to serve all potential customers.⁷

V. SUMMARY

Designating Nextel Partners as an ETC in the RTCs' study areas is not in the public interest. Such designation will not bring to consumers the benefits that Nextel Partners claims. Accordingly, Nextel Partners' public interest argument should be rejected, and its Petition denied.

Respectfully submitted,

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⁷ See, *Order, Joint Statement of Commissioners Kathleen Q. Abernathy and Jonathan S. Adelstein* at 2 (“We must ensure that companies that have traditionally invested in infrastructure to serve rural and high cost areas are not subject to a framework that unintentionally undercuts their ability to perform their critical universal service function”).

CERTIFICATE OF SERVICE

I, Kellie Breedlove, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that on this 4th day of September 2003, a copy of the foregoing "Comments of the Georgia Telephone Association" in CC Docket No. 96-45 was filed with the FCC via its electronic comment filing system and served, by first class, U.S. mail, postage prepaid or by hand delivery to the following parties:


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