

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

In the Matter of	)	
	)	
Application of Sprint Corporation	)	
	)	
For Designation as an Eligible	)	
Telecommunications Carrier	)	
in the State of Florida	)	
	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	

**APPLICATION OF SPRINT CORPORATION  
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF FLORIDA**

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October 10, 2003

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**APPLICATION OF SPRINT CORPORATION  
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF FLORIDA**

**INTRODUCTION AND SUMMARY**

Sprint Corporation, on behalf of its Wireless Division <sup>1/</sup> (“Sprint”) and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”), hereby petitions the Commission for designation as an Eligible Telecommunications Carrier (“ETC”) in the portions of its licensed service area in the State of Florida that are served by BellSouth Telecommunications Inc. (“BellSouth”) and Verizon Florida, Inc. (“Verizon”), both non-rural incumbent local exchange carriers (“ILECs”), for purposes of receiving federal universal service support. As demonstrated

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<sup>1/</sup> Sprint’s Wireless Division consists of Sprint Spectrum, L.P., WirelessCo, L.P., SprintCom, Inc., Sprint PCS License, L.L.C., APC PCS, LLC, PhillieCo, L.P., and other wholly-owned and controlled affiliates.

below, Sprint satisfies the prerequisites for ETC designation set forth in the Act and the Commission's rules, and Sprint's designation will serve the public interest.

#### **I. SPRINT'S UNIVERSAL SERVICE OFFERING.**

Sprint is authorized to provide broadband personal communications service ("PCS") in Florida pursuant to Part 24 of the Commission's rules. Sprint is a common carrier, consistent with the definition in 47 U.S.C. § 153(10) and the requirements of 47 U.S.C. § 214(e)(1), and is a commercial mobile radio service ("CMRS") provider as set forth in 47 U.S.C. § 332(c)(1).

Sprint intends to obtain universal service support funding in certain of the high-cost areas served by BellSouth and Verizon in Florida. As required, this funding will be used only to support the provision, upgrading, and maintenance of Sprint's all-digital wireless network in Florida. As a result, Sprint will be able to increase the service quality and geographic coverage of its network. In addition, designation of Sprint as an ETC will speed the deployment of advanced wireless network facilities that support provision of both basic wireless services and higher-bandwidth and enhanced services to consumers in Florida.<sup>2/</sup> As an ETC, Sprint will also offer a reduced-rate universal service package to subscribers who are eligible for Lifeline support. Sprint's service offerings are competitive with those of BellSouth and Verizon.

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<sup>2/</sup> See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, FCC 03-170, ¶ 13 (released July 14, 2003) ("*Definition of Universal Service Order*") ("[W]e continue to support the Commission's prior conclusion that 'our universal service policies should not inadvertently create barriers to the provision or access to advanced services, and. . . that our current universal service system does not create such barriers.' Thus, even though advanced services are not directly supported by federal universal service, '[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services.' We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services.").

The Applicant, Sprint, has its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas. All correspondence regarding this Application should be directed to the undersigned counsel for Sprint:

Roger C. Sherman  
Senior Attorney, PCS Regulatory Affairs  
Sprint Corporation  
401 Ninth St., N.W., Suite 400  
Washington, D.C. 20004  
(202) 585-1924

## **II. SPRINT SATISFIES THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ETC.**

Sprint satisfies each of the elements required for ETC designation, as shown below.

### **A. The State Commission in Florida Has Provided an Affirmative Statement That It Lacks Authority to Designate CMRS Carriers As ETCs.**

In the *Section 214(e)(6) Public Notice*, the Commission established that a carrier must demonstrate it is “not subject to the jurisdiction of a state commission” in order to petition the Commission for designation as an ETC.<sup>3/</sup> Specifically, in its *Twelfth Report and Order* in the Universal Service docket, the Commission stated that where a carrier provides the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the state commission lacks jurisdiction to perform the designation, the Commission will consider requests filed pursuant to Section 214(e)(6), and has “commit[ted] to resolve, within six months of the

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<sup>3/</sup> *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (“*Section 214(e)(6) Public Notice*”), citing 47 U.S.C. § 214(e)(6).

date filed at the Commission, all designation requests for non-tribal lands that are properly before us pursuant to section 214(e)(6).”<sup>4/</sup>

The Florida Public Service Commission (“Florida PSC”) has affirmatively stated that it lacks jurisdiction over ETC applications by CMRS carriers. Specifically, in a declaratory statement issued on September 23, 2003, the Florida PSC stated that it “does not have jurisdiction over CMRS providers for purposes of determining eligibility for ETC status pursuant to 47 U.S.C. § 214(e).”<sup>5/</sup>

It is thus well settled that the Florida PSC is without authority to take action on Sprint’s ETC Application, and that the declaratory statement cited above provides the requisite “affirmative statement” in full satisfaction of Section 214(e)(6). Consequently, the FCC is the appropriate regulatory authority to consider Sprint’s Application for ETC status in Florida.

**B. Sprint Provides Each of the Services Supported By the Federal High-Cost Universal Service Program.**

Sprint provides all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the Commission’s rules, throughout the service area for which it seeks ETC designation in Florida.

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<sup>4/</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, 15 FCC Rcd 12208, 12265, ¶ 114 (2000).

<sup>5/</sup> *Petition for Declaratory Statement That NPCR, Inc. d/b/a Nextel Partners, Commercial Mobile Radio Service Provider in Florida, Is Not Subject to Jurisdiction of Florida Public Service Commission for Purposes of Designation as “Eligible Telecommunications Carrier,”* Docket Nos. 030346-TP, 030413-TP, Order No. PSC-03-1063-DS-TP, at 9 (Florida Pub. Serv. Comm’n, Sept. 23, 2003). A copy of the Florida PSC’s declaratory statement is attached to this Application as Exhibit D.

In order to be designated as an ETC, a carrier must be a common carrier and both offer and advertise the supported services throughout the designated service area. 47 U.S.C. § 214(e)(1). The Commission has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms:

1. Voice-grade access to the public switched telephone network;
2. Local usage;
3. Dual-tone, multi-frequency (“DTMF”) signaling, or its functional equivalent;
4. Single-party service or its functional equivalent;
5. Access to emergency services;
6. Access to operator services;
7. Access to interexchange service;
8. Access to directory assistance; and
9. Toll limitation for qualifying low-income consumers.

For purposes of ETC applications, carriers must certify that they provide each of the supported services, or where appropriate, its functional equivalent.<sup>6/</sup> As shown below and in the Declaration attached as Exhibit A hereto, Sprint provides the required services throughout the area for which it seeks designation.

1. Voice-grade access to the public switched network. The Commission has concluded that voice-grade access means the ability to make and receive phone calls,

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<sup>6/</sup> Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948 & n.5.

within a specified bandwidth and frequency range.<sup>7/</sup> Sprint meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with BellSouth, Verizon, and other local exchange carriers, all customers of Sprint are able to make and receive calls on the public switched telephone network within the specified bandwidth.

2. Local usage. ETCs must include local usage beyond providing simple access to the public switched network as part of a universal service offering.<sup>8/</sup> Sprint includes specified quantities of usage in each of its rate plans, at the option of the customer, and thereby complies with the requirement that all ETCs offer local usage.

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. Consistent with the principles of competitive and technological neutrality, the Commission permits carriers to provide signaling that is functionally equivalent to DTMF, such as out-of-band digital signaling, in satisfaction of this requirement.<sup>9/</sup> The DTMF-emulating service offered by Sprint, like that offered by other CMRS providers, satisfies this requirement.

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<sup>7/</sup> *Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8810-12, ¶¶ 63-64 (1997) (“First Report and Order”), subsequent history omitted.*

<sup>8/</sup> The Commission has rejected proposals to require unlimited local usage, and has not quantified any minimum amount of local usage required to be included in a universal service offering. In the *First Report and Order*, the Commission deferred a determination on the amount of local usage that a carrier would be required to provide. *Id.* at 8812-14, ¶¶ 65-69. The Commission later issued a Notice of Proposed Rulemaking seeking comment on how much, if any, local usage an ETC should be required to offer, *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21279-81, ¶¶ 50-53 (1998)*, but more recently, the Commission decided to “adopt[ ] the Joint Board recommendation that unlimited local usage should not be added to the list of supported services.” *Definition of Universal Service Order, ¶ 14.*

<sup>9/</sup> 47 C.F.R. § 54.101(a)(3); *First Report and Order, 12 FCC Rcd at 8814-15, ¶ 71.*

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).<sup>10/</sup> The Commission has concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission.”<sup>11/</sup> Sprint meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

5. Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Sprint currently provides its subscribers with access to 911 emergency services in accord with this requirement, and consistent with Commission regulations throughout the service area for which designation is sought. Sprint also provides Enhanced 911 services, including Phase I and Phase II E-911 services, where requested by local public safety authorities ready to receive the information and where such services are supported by the local exchange carrier.

6. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.<sup>12/</sup> Sprint meets this requirement by providing all of its customers with access to operator services, including customer service and call completion.

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<sup>10/</sup> *First Report and Order*, 12 FCC Rcd at 8810, ¶ 62.

<sup>11/</sup> *Id.*

<sup>12/</sup> *Id.* at 8817-18, ¶ 75.

7. Access to interexchange service. An ETC must offer consumers access to interexchange service to make and receive toll or interexchange calls.<sup>13/</sup> Sprint meets this requirement by providing all of its customers with the ability to make and receive interexchange calls. Most Sprint rate plans include nationwide interexchange calling at the same rate as local calls. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

8. Access to directory assistance. The ability to place a call to directory assistance is a required service offering.<sup>14/</sup> Sprint meets this requirement by providing all of its customers with access to directory assistance by dialing “411.”

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 additional charge. 47 C.F.R. § 54.101(a)(9). Once designated as an ETC, Sprint will participate in Lifeline as required, and will provide toll control and/or toll blocking capability in satisfaction of the Commission’s requirement. Sprint currently has the technology to provide toll limitation and will utilize this technology to provide such functionality at no additional charge to Lifeline customers.

**C. Sprint Offers Supported Services Over Its Own Facilities.**

A carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of

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<sup>13/</sup> Equal access, however, is not required at this time. “The FCC do[es] not include equal access to interexchange service among the services supported by universal service mechanisms.” *Id.* at 8819, ¶ 78; *Definition of Universal Service Order* at ¶ 33 (“[W]e make no decision regarding equal access at this time. . . . [W]e defer consideration of this issue pending resolution of the *Portability Proceeding*.”).

<sup>14/</sup> *First Report and Order*, 12 FCC Rcd at 8821, ¶ 80.

another carrier's services.”<sup>15/</sup> Sprint provides the supported services using its existing network infrastructure, which includes the antennas, cell-sites, towers, trunking, mobile switching, and interconnection facilities owned or leased by Sprint, used to serve PCS customers.

**D. Sprint Advertises Its Universal Service Offering.**

Sprint advertises the availability of the supported services and the corresponding charges in a manner that informs the general public within the designated service area of both the services available and the corresponding charges. Sprint advertises its wireless services through several different media of general distribution throughout the service areas for which designation is requested.

**III. SPRINT PROVIDES SERVICE THROUGHOUT THE SERVICE AREA IN FLORIDA FOR WHICH IT REQUESTS DESIGNATION.**

Sprint requests ETC designation for the service area in Florida depicted on the map attached as Exhibit B. Specifically, Sprint proposes a service area consisting of each of the BellSouth and Verizon wire centers in Florida in which PCS service is available over the Sprint PCS network. To the extent Sprint serves only a portion of the wire center, Sprint requests ETC designation only in that portion of the wire center where it provides service. A map of the proposed service area is attached in Exhibit B, and a list of the full and partial wire centers included in the proposed service area is provided in Exhibit C.

Pursuant to the Act, a “service area” is a “geographic area established by a state commission . . . for the purpose of determining universal service obligations and

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<sup>15/</sup> 47 U.S.C. § 214(e)(1)(A).

support mechanisms.” 47 U.S.C. § 214(e)(5). For service areas served by non-rural ILECs such as BellSouth and Verizon, there are no restrictions on how a commission defines the “service area” for purposes of designating a competitive ETC. *Id.* Therefore, the Commission may designate Sprint as an ETC for a service area consisting of the BellSouth and Verizon wire centers set forth herein.

#### **IV. GRANTING THIS APPLICATION WILL SERVE THE PUBLIC INTEREST.**

Sprint need not make a separate public interest showing in connection with this Application, since it is seeking designation only in areas served by BellSouth and Verizon, both non-rural ILECs. The Commission has specifically rejected proposals to require such a showing from carriers seeking ETC designation for areas served by non-rural ILECs, holding:

[D]esignation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. The carrier need make no further showing to satisfy this requirement.<sup>16/</sup>

Nonetheless, Sprint confirms that a grant of its Application *will* serve the public interest by promoting additional deployment of wireless facilities and services to the high-cost areas served by BellSouth and Verizon in Florida, and bringing consumers in those areas the benefits of additional competitive universal service offerings.<sup>17/</sup>

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<sup>16/</sup> *Federal-State Joint Board on Universal Service; Celco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, 45, ¶ 14 (Com. Car. Bur. 2000).

<sup>17/</sup> *See, e.g., Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 17 FCC Rcd 9589, 9595, ¶ 13 (Wireline Comp. Bur. 2002) (“*Pine Belt*”) (“[F]or those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se*

The public interest is further served by the expeditious grant of this Application. The Commission has recognized that “excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas,” and therefore the Commission made a public commitment to resolve ETC petitions within six months or less after they are filed.<sup>18/</sup> The Commission should abide by that commitment, and should expeditiously proceed to grant this petition. In recent ETC applications, a number of ILECs have argued, in effect, that because they dislike various aspects of the current universal service rules and have argued in the pending Joint Board proceeding that the rules be changed, therefore the Commission should ignore the existing rules and should reject or defer the applications.<sup>19/</sup> The Commission must reject these arguments.<sup>20/</sup> The only rules under which the Commission may lawfully operate today are those on the books today. Potential rule changes will be addressed in the Joint Board proceeding, and cannot

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with the public interest.”); *Cellco Partnership d/b/a ell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd 39, 43, ¶ 8 (Com. Car. Bur. 2000) (“[A] policy of technological neutrality will foster competition by including providers, such as wireless providers, that may otherwise have been excluded from participation in the federal universal service mechanisms.”).

<sup>18/</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, 15 FCC Rcd 12208, ¶ 94 (2000).

<sup>19/</sup> Notably, much of the controversy over ETC applications has concerned the “public interest” standard to be applied to applications for ETC status in *rural* ILEC study areas pursuant to 47 U.S.C. § 214(e)(2) and (6). But that controversy has no relevance to the instant petition, since Sprint is applying for designation only in *non-rural* ILEC service areas.

<sup>20/</sup> In particular, the Commission must reject the unfounded contention raised in certain past ETC applications that designating competitive entrants as ETCs would undermine access charge reform. See Sprint Reply Comments, ALLTEL Communications, Inc. Petitions for Designation as an Eligible Telecommunications Carrier in Alabama and Virginia, CC Docket No. 96-45 (filed July 14, 2003).

lawfully be considered in an individual ETC designation proceeding. On this basis, the Wireline Competition Bureau has correctly granted other ETC applications notwithstanding ILEC objections: “We recognize that these parties raise important issues regarding high-cost support. We find, however, that these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC.”<sup>21/</sup> Thus, the Commission should proceed expeditiously to grant this Application.

#### **V. HIGH COST CERTIFICATION.**

Sprint certifies that all high-cost universal service support received in Florida will be used only for the provision, maintenance, and upgrading of services and facilities for which the support is intended. See Exhibit A, ¶ 18.

#### **VI. ANTI-DRUG ABUSE CERTIFICATION.**

Sprint certifies that no party to this petition is subject of a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, and Sections 1.2001-1.2003 of the Commission’s rules, 47 C.F.R. §§ 1.2001-1.2003. See Exhibit A, ¶ 19.

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<sup>21/</sup> *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama*, 17 FCC Rcd 24393, ¶ 32 (Wireline Comp. Bur. 2002); see also *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama*, 17 FCC Rcd 23532, ¶ 32 (Wireline Comp. Bur. 2002).

**CONCLUSION**

Sprint respectfully requests that the Commission designate it as an ETC in Florida on an expedited basis.

Respectfully submitted,

SPRINT CORPORATION

By: 

Roger C. Sherman  
Senior Attorney, PCS Regulatory Affairs  
Sprint Corporation  
401 Ninth St., N.W., Suite 400  
Washington, D.C. 20004  
(202) 585-1924

October 10, 2003

## Exhibit A

### Declaration of Luisa L. Lancetti

Pursuant to 47 C.F.R. § 1.16, Luisa L. Lancetti declares under penalty of perjury the following:

1. My name is Luisa L. Lancetti and I serve as Vice-President, Wireless Regulatory Affairs for Sprint Corporation. My business address is 401 – 9th St., N.W., Washington, D.C. 20004. I am an authorized representative of Sprint Corporation's Wireless Division, which consists of Sprint Spectrum, L.P., WirelessCo, L.P., SprintCom, Inc., Sprint PCS License, L.L.C., APC PCS, LLC, PhillieCo, L.P., and other wholly-owned and controlled affiliates (collectively, "Sprint"), with regard to Sprint's Application for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of Florida ("Application"). I have read the foregoing Application and all information therein is true and correct to the best of my knowledge, information and belief.

2. Sprint is authorized to provide broadband personal communications service ("PCS") in Florida pursuant to Part 24 of the Commission's rules. Sprint is a common carrier, consistent with the definition in 47 U.S.C. § 153(10) and the requirements of 47 U.S.C. § 214(e)(1), and is a commercial mobile radio service provider as set forth in 47 U.S.C. § 332(c)(1).

3. Sprint intends to obtain universal service support funding in certain of the high-cost areas served by BellSouth Telecommunications Inc. ("BellSouth") and Verizon Florida, Inc. ("Verizon"), both non-rural incumbent local exchange carriers ("ILECs"), in Florida. As required, this funding will be used only to support the provision, upgrading, and maintenance of Sprint's all-digital wireless network in Florida. As a result, Sprint will be able to increase the service quality and geographic coverage of its network. In addition, designation of Sprint as an ETC will speed the deployment of advanced wireless network facilities that support provision of both basic wireless services and higher-bandwidth and enhanced services to consumers in Florida. As an ETC, Sprint will also offer a reduced-rate universal service package to subscribers who are eligible for Lifeline support. Sprint's service offerings are competitive with those of BellSouth and Verizon.

4. Sprint provides all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the Commission's rules, throughout the service area for which it seeks ETC designation in Florida.

5. Voice-grade access to the public switched network. The Commission has concluded that voice-grade access means the ability to make and receive phone calls, within a specified bandwidth and frequency range. Sprint meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with BellSouth, Verizon, and other local exchange carriers, all customers of Sprint are able to make and receive calls on the public switched telephone network within the specified bandwidth.

6. Local usage. ETCs must include local usage beyond providing simple access to the public switched network as part of a universal service offering. Sprint includes specified quantities of usage in each of its rate plans, at the option of the customer, and thereby complies with the requirement that all ETCs offer local usage.

7. 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. Sprint provides signaling that is functionally equivalent to DTMF, such as out-of-band digital signaling, which satisfies this requirement.

8. Single-party service or its functional equivalent. Sprint meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

9. Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Sprint currently provides its subscribers with access to 911 emergency services in accord with this requirement, and consistent with Commission regulations throughout the service area for which designation is sought. Sprint also provides Enhanced 911 services, including Phase I and Phase II E-911 services, where requested by local public safety authorities ready to receive the information and where such services are supported by the local exchange carrier.

10. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Sprint meets this requirement by providing all of its customers with access to operator services, including customer service and call completion.

11. Access to interexchange service. Sprint meets the requirement of access to interexchange service by providing all of its customers with the ability to make and receive interexchange calls. Most Sprint rate plans include nationwide interexchange calling at the same rate as local calls. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

12. Access to directory assistance. The ability to place a call to directory assistance is a required service offering. Sprint meets this requirement by providing all of its customers with access to directory assistance by dialing “411.”

13. Toll limitation for qualifying low-income consumers. An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no additional charge. 47 C.F.R. § 54.101(a)(9). Once designated as an ETC, Sprint will participate in Lifeline as required, and will provide toll control and/or toll blocking capability in satisfaction of the Commission’s requirement. Sprint currently has the technology to provide toll limitation and will utilize this technology to provide such functionality at no additional charge to Lifeline customers.

14. A carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” Sprint provides the supported services using its existing network

infrastructure, which includes the antennas, cell-sites, towers, trunking, mobile switching, and interconnection facilities owned or leased by Sprint, used to serve PCS customers.

15. Sprint advertises the availability of the supported services and the corresponding charges in a manner that informs the general public within the designated service area of both the services available and the corresponding charges. Sprint advertises its wireless services through several different media of general distribution throughout the service areas for which designation is requested.

16. Sprint requests ETC designation for the service area in Florida depicted on the map attached as Exhibit B. Specifically, Sprint proposes a service area consisting of each of the BellSouth and Verizon wire centers in Florida in which PCS service is available over the Sprint PCS network. To the extent Sprint serves only a portion of the wire center, Sprint requests ETC designation only in that portion of the wire center where it provides service. A map of the proposed service area is attached in Exhibit B, and a list of the full and partial wire centers included in the proposed service area is provided in Exhibit C.

17. A grant of Sprint's Application will serve the public interest by promoting additional deployment of wireless facilities and services to the high-cost areas served by BellSouth and Verizon in Florida, and bringing consumers in those areas the benefits of additional competitive universal service offerings.

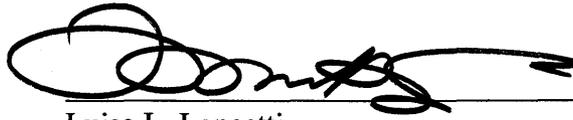
18. High-Cost Certification. Sprint certifies that all high-cost universal service support received in Florida will be used only for the provision, maintenance, and upgrading of services and facilities for which the support is intended.

19. Anti-Drug Abuse Certification. To the best of my knowledge, the applicant referred to in the foregoing Application, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant as specified by Section 1.2002(b) of the Commission's rules, are not subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

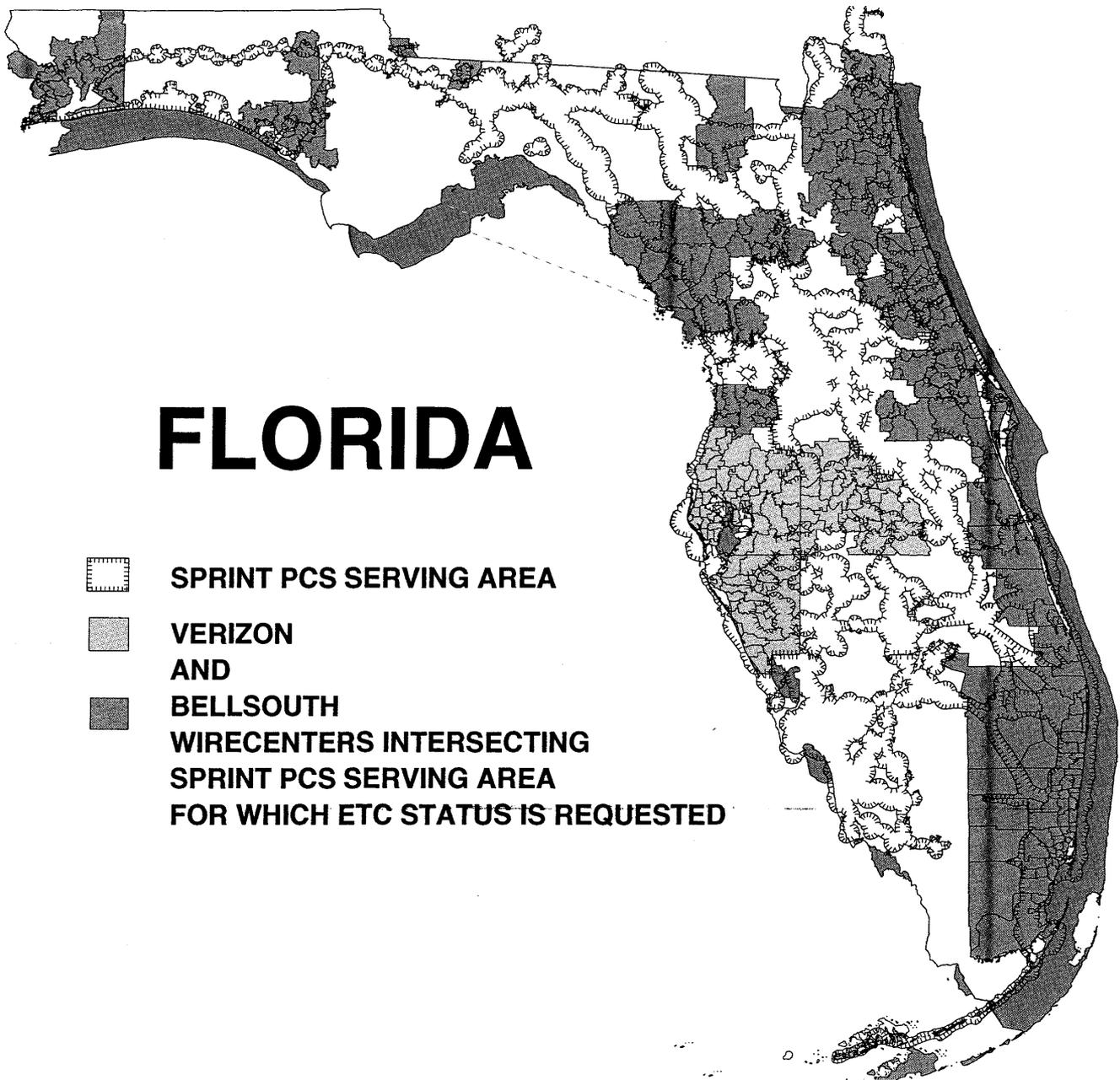
Executed on October 10, 2003.

A handwritten signature in black ink, appearing to read 'Luisa L. Lancetti', written over a horizontal line.

Luisa L. Lancetti  
Vice-President, Wireless Regulatory Affairs  
Sprint Corporation

## Exhibit B

MAP OF SPRINT SERVICE AREA DEPICTING NON-RURAL  
WIRE CENTERS WHERE ETC STATUS IS REQUESTED



# FLORIDA

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	CELL	WIRE CENTER NAME
<b>VERIZON FLORIDA INC.</b>		
	ABDLFLXA	AUBURNDALE
	ALFAFLXA	ALAFIA
	ALTRFLXA	ALTURAS
	ANMRFLXA	ANNA MARIA
	BARTFLXA	BARTOW
	BAYUFLXA	BAYOU
	BBPKFLXA	BABSON PARK
	BHPKFLXA	BEACH PARK
	BRBAFLXA	BRADENTON BAY
	BRJTFLXA	BRADLEY
	BRNDFLXA	BRANDON
	BRTNFLXX	BRADENTON MAIN
	CLWRFLXA	CLEARWATER
	CNSDFLXA	COUNTRYSIDE
	CRWDFLXA	CARROLLWOOD
	CYGRFLXA	CYPRESS GARDENS
	DNDNFLXA	DUNEDIN
	DUNDFLXA	DUNDEE
	ENWDFLXA	ENGLEWOOD
	FHSDFLXA	FEATHERSOUND
	FRSTFLXA	FROSTPROOF
	GNDYFLXA	GANDY
	HDSNFLXA	HUDSON
	HGLDFLXA	HIGHLANDS
	HNCYFLXA	HAINES CITY MAIN
	HNCYFLXN	HAINES CITY NORTH
	HYPKFLXA	HYDE PARK
	INLKFLXA	INDIAN LAKE
	INRKFLXX	INDIAN ROCKS
	KYSTFLXA	KEYSTONE
	LGBKFLXA	LONGBOAT KEY
	LKALFLXA	LAKE ALFRED
	LKLDFLXA	LAKELAND MAIN
	LKLDFLXE	LAKELAND EAST
	LKLDFLXN	LAKELAND NORTH
	LKWFLXA	LAKE WALES MAIN
	LKWFLXE	LAKE WALES EAST
	LLMNFLXA	LEALMAN
	LNLKFLXA	LAND O LAKES
	LRGOFLXA	LARGO
	LUTZFLXA	LUTZ
	MLBYFLXA	MULBERRY
	MNLKFLXA	MOON LAKE
	MYCYFLXA	MYAKKA
	NGBHFLXA	NORTH GULF BEACH
	NPRCFLXA	NEW PORT RICHEY

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	CLLI	WIRE CENTER NAME
<b>VERIZON FLORIDA INC.</b>		
	NRPTFLXA	NORTH PORT
	NRSDFLXA	SARASOTA NORTHSIDE
	OLDSFLXA	OLDSMAR
	OSPRFLXA	OSPREY
	PKCYFLXA	POLK CITY
	PLMTFLXA	PALMETTO
	PLSLFLXA	PALMA SOLA
	PNCRFLXA	PINECREST
	PNLSFLXA	PINELLAS
	POINFLXA	POINCIANA
	PRSHFLXA	PARRISH
	PSDNFLXA	PASADENA
	PTCYFLXA	PLANT CITY
	RSKNFLXA	RUSKIN
	SARKFLXA	ST. ARMANDS KEY
	SEKYFLXA	SIESTA KEY
	SGBEFLXA	SOUTH GULF BEACH
	SKWYFLXA	SKYWAY
	SLSPFLXA	SULPHUR SPRINGS
	SMNLFLXA	SEMINOLE
	SNSPFLXA	SEVEN SPRINGS
	SPBGFLXA	ST. PETERSBURG MAIN
	SPBGFLXS	ST. PETERSBURG SOUTH
	SPRGFLXA	SARASOTA SPRINGS
	SRSTFLXA	SARASOTA MAIN
	SSDSFLXA	SARASOTA SOUTHSIDE
	STGRFLXA	ST. GEORGE
	SWTHFLXA	SWEETWATER
	TAMPFLXE	TAMPA EAST
	TAMPFLXX	TAMPA MAIN
	THNTFLXA	THONOTOSASSA
	TMTRFLXA	TEMPLE TERRACE
	TRSPFLXA	TARPON SPRINGS
	UNVRFLXA	UNIVERSITY
	VENCFLXA	VENICE MAIN
	VENCFLXS	VENICE SOUTH
	WIMMFLXA	WIMAUMA
	WLCHFLXA	WESLEY CHAPEL
	WLCRFLXA	WALLCRAFT
	WNHNFLXC	WINTER HAVEN
	WSSDFLXA	TAMPA WESTSIDE
	YBCTFLXA	YBOR
	ZPHYFLXA	ZEPHYRHILLS

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	CLLI	WIRE CENTER NAME
<b>BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL &amp; TEL</b>		
	ARCHFLMA	ARCHER
	BCRTFLBT	BOCA RATON BOCA TEECA
	BCRTFLMA	BOCA RATON MAIN
	BCRTFLSA	BOCA RATON SANDALFOOT
	BGPIFLMA	BIG PINE KEY MAIN
	BKVLFLJF	BROOKSVILLE
	BLDWFLMA	BALDWIN
	BLGLFLMA	BELLE GLADE MAIN
	BNNLFLMA	BUNNELL
	BRSNFLMA	BRONSON
	BYBHFLMA	BOYNTON BEACH MAIN
	CCBHFLAF	COCOA BEACH
	CCBHFLMA	COCOA BEACH
	CDKYFLMA	CEDAR KEY
	CFLDFLMA	CHIEFLAND
	CHPLFLJA	CHIPLEY
	CNTMFLLE	CANTONMENT
	COCOFLMA	COCOA-MAIN
	COCOFLME	COCOA-MERRITT ISLAND
	CSCYFLBA	CROSS CITY
	DBRYFLDL	DEBARY DELTONA
	DBRYFLMA	DEBARY MAIN
	DELDFLMA	DELAND
	DLBHFLKP	DLBH KINGS POINT
	DLBHFLMA	DELRAY BEACH MAIN
	DLSPFLMA	DELEON SPRINGS
	DNLNFLWM	DUNNELLON
	DRBHFLMA	DEERFIELD BEACH MAIN
	DYBHFLFN	DAYTONA BEACH -FENTRESS
	DYBHFLMA	DAYTONA BEACH -MAIN
	DYBHFLPB	DAYTONA BEACH -ORMOND BEACH
	DYBHFLPS	DAYTONA BEACH -OCEAN SHORES
	DYBHFLPO	DAYTONA BEACH -PORT ORANGE
	EGLLFLBG	EAU GALLIE-BOWE GARDENS
	EGLLFLIH	EAU GALLIE-INDIAN HRBR BCH
	EORNFLMA	EAST ORANGE
	FLBHFLMA	FLAGLER BEACH
	FRBHFLFP	FERNANDINA BEACH
	FTGRFLMA	FT.GEORGE
	FTLDFLCR	FT LAUDERDALE CORAL RIDGE
	FTLDFLCY	FT LAUDERDALE CYPRESS
	FTLDFLJA	FT LAUDERDALE JACARANDA
	FTLDFLMR	FT LAUD MAIN RELIEF
	FTLDFLOA	FT LAUDERDALE OAKLAND
	FTLDFLPL	FT LAUDERDALE PLANTATION
	FTLDFLSG	FT LAUDERDALE SAWGRASS

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	CLL	WIRE CENTER NAME
<b>BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL &amp; TEL</b>		
	FTLDFLSU	FT LAUDERDALE SUNRISE
	FTLDFLWN	FT LAUDERDALE WESTON
	FTPRFLMA	FORT PIERCE MAIN
	GCSPFLCN	GREEN COVE SPGS
	GENVFLMA	GENEVA
	GLBRFLMC	GULF BREEZE
	GSVLFLMA	GAINESVILLE-MAIN
	GSVLFLNW	GAINESVILLE-NORTHWEST
	HAVNFLMA	HAVANA
	HBSDFLMA	HOBE SOUND MAIN
	HLNVFLMA	HOLLEY-NAVARRE
	HLWDFLHA	HOLLYWOOD HALLANDALE
	HLWDFLMA	HOLLYWOOD MAIN
	HLWDFLPE	HOLLYWOOD PEMBROKE PINES
	HLWDFLWH	HOLLYWOOD WEST HOLLYWOOD
	HMSTFLEA	HOMESTEAD EAST
	HMSTFLHM	HOMESTEAD MAIN
	HMSTFLNA	HOMESTEAD NARANJA
	HTISFLMA	HUTCHINSON IS. MAIN
	HWTHFLMA	HAWTHORNE
	ISLMFLMA	ISLAMORADA MAIN
	JCBHFLAB	JACKSONVILLE BEACH-ATLANTIC
	JCBHFLMA	JACKSONVILLE BEACH-MAIN
	JCBHFLSP	JACKSONVILLE BEACH-SAN PABLO
	JCVLFLAR	JACKSONVILLE-ARLINGTON
	JCVLFLBW	JACKSONVILLE-BEACHWOOD
	JCVLFLCL	JACKSONVILLE-CLAY STREET MGO
	JCVLFLFC	JACKSONVILLE-FORT CAROLINE
	JCVLFLIA	JACKSONVILLE-INTL AIRPORT
	JCVLFLJT	JACKSONVILLE-SOUTHPOINT
	JCVLFLLF	JACKSONVILLE-LAKE FOREST
	JCVLFLNO	JACKSONVILLE-NORMANDY
	JCVLFLOW	JACKSONVILLE-OCEANWAY
	JCVLFLRV	JACKSONVILLE-RIVERSIDE
	JCVLFLSJ	JACKSONVILLE-SAN JOSE
	JCVLFLSM	JACKSONVILLE-SAN MARCO
	JCVLFLWC	JACKSONVILLE-WESCONNETT
	JPTRFLMA	JUPITER MAIN
	KYHGFLMA	KEYSTONE HGTS
	KYLRFLLS	KEY LARGO SOUND
	KYLRFLMA	KEY LARGO MAIN
	KYWSFLMA	KEY WEST MAIN
	LKCYFLMA	LAKE CITY
	LKMRFLMA	LAKE MARY
	LYHNFLOH	LYNNHAVEN
	MCNPFLMA	MICANOPY

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	GLLI	WIRE CENTER NAME
<b>BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL &amp; TEL</b>		
	MDBGFLPM	MIDDLEBURG
	MIAMFLAE	MIAMI ALHAMBRA
	MIAMFLAL	MIAMI ALLAPATTAH
	MIAMFLAP	MIAMI AIRPORT
	MIAMFLBA	MIAMI BAYSHORE
	MIAMFLBC	MIAMI BISCAYNE
	MIAMFLBR	MIAMI BEACH
	MIAMFLCA	MIAMI CANAL
	MIAMFLDB	MIAMI DADELAND BLVD
	MIAMFLFL	MIAMI FLAGLER
	MIAMFLGR	MIAMI GRANDE
	MIAMFLHL	MIAMI HIALEAH
	MIAMFLIC	MIAMI INDIAN CREEK
	MIAMFLKE	MIAMI KEY BISCAYNE
	MIAMFLME	MIAMI METRO
	MIAMFLNM	MIAMI NORTH MIAMI
	MIAMFLNS	MIAMI NORTHSIDE
	MIAMFLOL	MIAMI OPA LOCKA
	MIAMFLPB	MIAMI POINCIANA
	MIAMFLPL	MIAMI PALMETTO
	MIAMFLRR	MIAMI RED ROAD
	MIAMFLSH	MIAMI MIAMI SHORES
	MIAMFLSO	MIAMI SILVER OAKS
	MIAMFLWD	MIAMI W. DADE
	MIAMFLWM	MIAMI W. MIAMI
	MICCFLBB	BAREFOOT BAY
	MLBRFLMA	MELBOURNE
	MLTNFLRA	MILTON RAVINE
	MNDRFLAV	JACKSONVILLE-AVENUES
	MNDRFLLO	JACKSONVILLE-LORETTO
	MNDRFLLW	JACKSONVILLE-LEMONWOOD
	MNSNFLMA	MUNSON
	MRTHFLVE	MRTH VACA KEY
	MXVLFLMA	MAXVILLE
	NDADFLAC	NORTH DADE ARCH CREEK
	NDADFLBR	NORTH DADE BRENTWOOD
	NDADFLGG	NORTH DADE GOLDEN GLADES
	NDADFLOL	NORTH DADE OLETA
	NKLRFLMA	N. KEY LARGO MAIN
	NSBHFLMA	NEW SMYRNA BCH
	NWBYFLMA	NEWBERRY
	OKHLFLMA	OAK HILL
	OLTWFLLN	OLD TOWN
	ORLDFLAP	ORLANDO -AZALEA PARK
	ORLDFLCL	ORLANDO -COLONIAL
	ORLDFLMA	ORLANDO -MAGNOLIA

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	CLL	WIRE CENTER NAME
<b>BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL &amp; TEL</b>		
	ORLDFLPC	ORLANDO -PINECASTLE
	ORLDFLPH	ORLANDO -PINEHILLS
	ORLDFLSA	ORLANDO -SAND LAKE
	ORPKFLMA	ORANGE PARK-MAIN
	ORPKFLRW	ORANGE PARK-RIDGEWOOD
	OVIDFLCA	OVIDO
	PACEFLPV	PACE PINE VILLA
	PAHKFLMA	PAHOKEE MAIN
	PCBHFLNT	PANAMA CITY BEACH
	PLCSFLMA	PALM COAST
	PLTKFLMA	PALATKA
	PMBHFLCS	POMPANO BEACH CORAL SPRINGS
	PMBHFLFE	POMPANO BEACH FEDERAL
	PMBHFLMA	POMPANO BEACH MARGATE
	PMBHFLNP	POMPANO BEACH
	PMBHFLTA	POMPANO BEACH TAMARAC
	PMPKFLMA	POMONA PARK
	PNCYFLCA	PANAMA CITY CALLAWAY
	PNCYFLMA	PANAMA CITY MAIN
	PNSCFLBL	PENSACOLA-BELMONT
	PNSCFLFP	PENSACOLA-FERRY PASS
	PNSCFLHC	PENSACOLA-HILLCREST
	PNSCFLPB	PENSACOLA-PERDIDO BAY
	PNSCFLWA	PENSACOLA-WARRINGTON
	PNVDFLMA	PONTE VEDRA BCH
	PRRNFLMA	PERRINE MAIN
	PRSNFLFD	PIERSON
	PTSLFLMA	PORT ST. LUCIE MAIN
	PTSLFLSO	PORT ST LUCIE SOUTH
	SBSTFLFE	SEBASTIAN FELLSMERE
	SBSTFLMA	SEBASTIAN MAIN
	SGKYFLMA	SUGARLOAF KEY MAIN
	SNFRFLMA	SANFORD-O-WS
	STAGFLBS	ST AUGUSTIN-BEACH SIDE
	STAGFLMA	ST AUGUSTIN-MAIN
	STAGFLSH	ST AUGUSTIN-SHORES
	STAGFLWG	ST AUGUSTIN-WORLDGOLF
	STRNFLMA	STUART MAIN
	TRENFLMA	TRENTON
	TTVFLMA	TITUSVILLE
	VRBHFLBE	VERO BEACH BEACHLAND
	VRBHFLMA	VERO BEACH MAIN
	WELKFLMA	WELAKA
	WPBHFLAN	WEST PALM BEACH MAIN ANNEX
	WPBHFLGA	WEST PALM BEACH GREENACRES
	WPBHFLGR	WEST PALM BEACH GARDENS

NonRural ILEC Wire Centers Served by Sprint Wireless Division  
For Which ETC Status is Requested

ILEC	GLL	WIRE CENTER NAME
<b>BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL &amp; TEL</b>		
	WPBHFLHH	WEST PALM BEACH HAVERHILL
	WPBHFLLE	WEST PALM BEACH LAKE WORTH
	WPBHFLRB	WEST PALM BEACH RIVIERA BEACH
	WPBHFLRP	WEST PALM BEACH ROYAL PALM BCH
	WWSPFLHI	WEEKICH SPRINGS-HIGHLAND
	WWSPFLSH	WEEKICH SPRINGS-SPRING HILL
	YNFNFLMA	YOUNGSTOWN-FOUNTAIN
	YNTWFLMA	YANKEETOWN
	YULEFLMA	YULEE

**EXHIBIT D**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition for declaratory statement that NPCR, Inc. d/b/a Nextel Partners, commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as "eligible telecommunications carrier."**

**DOCKET NO. 030346-TP**

**In re: Petition for declaratory statement that ALLTEL Communications, Inc., commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as "eligible telecommunications carrier."**

**DOCKET NO. 030413-TP  
ORDER NO. PSC-03-1063-DS-TP  
ISSUED: September 23, 2003**

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**The following Commissioners participated in the disposition of this matter:**

**LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON**

**DECLARATORY STATEMENT**

**BY THE COMMISSION:**

**I. INTRODUCTION**

**A. The Parties**

By petitions filed April 16, 2003, and April 29, 2003, respectively, NPCR, Inc., d/b/a Nextel Partners (Nextel), and ALLTEL Wireless Holdings, L.L.C. and New York NEWCO Subsidiary, Inc., subsidiaries of ALLTEL Communications, Inc. (ALLTEL), both of which are commercial mobile radio service (CMRS) providers, requested declaratory statements pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative

Code, that the Florida Public Service Commission (Commission) lacks jurisdiction to designate CMRS carriers eligible telecommunications carrier (ETC) status for the purpose of receiving federal universal service support.<sup>1</sup>

Northeast Florida Telephone Company (Northeast Florida) and GTC, Inc. d/b/a GT COM (GT Com) filed petitions to intervene in these dockets on May 22, 2003. TDS TELECOM/Quincy Telephone (Quincy) filed a petition to intervene on May 29, 2003. ALLTEL filed a response but did not oppose the intervention. The petitions were granted by Order Nos. PSC-03-0712-PCO-TP and PSC-03-0713-PCO-TP, respectively, on June 16, 2003.

**B. Summary of Ruling**

After careful consideration and as discussed, *infra*, the Commission grants Nextel's and ALLTEL's petitions for declaratory statements.

ETC status is a prerequisite for a carrier to be eligible to receive universal service funding. The Federal Communications Commission (FCC) has determined that CMRS

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<sup>1</sup> Notice of receipt of Nextel's Petition for Declaratory Statement was published in the May 2, 2003, issue of the Florida Administrative Weekly. Notice of receipt of ALLTEL's Petition was published in the May 16, 2003, issue. The petitioners agreed to toll the statutory time for disposition in order for us to consider their petitions at our August 19, 2003, agenda conference.

carriers, such as Nextel and ALLTEL, may be designated as ETCs. Section 214(e)(6) of the federal 1996 Telecommunications Act (1996 Act) provides that where a carrier is not subject to the jurisdiction of a state commission, then the FCC shall make the ETC determination. The FCC has ruled that, in order for it to consider requests for ETC status, the requesting carrier must provide an "affirmative statement" from the state commission or a court of competent jurisdiction that the state commission lacks the jurisdiction to make the designation.<sup>2</sup> See *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (released June 30, 2000) at ¶ 93.<sup>3</sup>

As discussed, *infra*, this Commission does not have jurisdiction over CMRS carriers for purposes of determining eligibility for ETC status. Indeed, the Florida Legislature has expressly excluded CMRS providers from the jurisdiction of the Commission. As the Commission lacks jurisdiction over CMRS providers, the FCC is the appropriate venue for Nextel and ALLTEL to seek ETC status.

## II. THE COMMISSION LACKS JURISDICTION OVER CMRS PROVIDERS

### A. Lack of Jurisdiction Over CMRS Providers

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<sup>2</sup> We note that numerous state commissions have held that they do not have jurisdiction to designate CMRS carriers ETC status.

<sup>3</sup> See also *FCC 01-283, Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, 16 FCC Rcd 18133; 2001 FCC LEXIS 5313, fn. 46 (released October 5, 2001); *FCC 97-419, Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to § 214(e)(6) of the Telecommunications Act* (released December 29, 1997).

As a legislatively created body, the jurisdiction of the Commission is that conferred by statute – but no more than that. Chapter 364, Florida Statutes, governs our resolution of this threshold, and dispositive, jurisdictional issue. For present purposes, Chapter 364 expressly limits our jurisdiction to jurisdiction over “telecommunications companies” as set forth in that chapter.<sup>4</sup> A telecommunications company does not include a CMRS provider. Indeed, the Legislature specifically provided to the contrary in Section 364.02(12), Florida Statutes, which expressly states that:

The term “telecommunications company” *does not include*:

...

(c) A commercial mobile radio service provider;

§ 364.02(12)(c), Fla. Stat. (emphasis added).<sup>5</sup>

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<sup>4</sup> Section 364.01, Florida Statutes, titled “Powers of commission, legislative intent,” states that “(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.”

<sup>5</sup> The one exception, not applicable here, is that CMRS providers along with intrastate interexchange telecommunications companies (also not regulated by the Commission) shall continue to be liable for any taxes imposed by the State pursuant to Chapters 202, 203, and 212, Florida Statutes, and any fees assessed pursuant to Chapter 364, Florida Statutes. *See* § 364.02(12), Fla.Stat.

The Commission has previously recognized, correctly so, that it lacks jurisdiction over CMRS providers. Specifically, in *In re: Application for certificate to provide pay telephone service by Radio Communications Corporation, and request for waiver of Rule 25-24.515(6), (10), and (14), F.A.C.*, the Commission noted that, pursuant to Section 364.02(12)(c), Florida Statutes, CMRS providers are “not regulated by this Commission” and that CMRS providers are “not subject to Commission rules.” See Order No. PSC-00-1243-PAA-TC, Docket No. 991821-TC (July 10, 2000).<sup>6</sup>

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<sup>6</sup> Numerous state commissions have likewise held that they lack jurisdiction to designate ETC status for CMRS carriers. See, e.g., *In the Matter of Designation of Carriers Eligible for Universal Carrier Support*, Docket No. P-100, SUB 133c, 2003 WL 21638308, 2003 N.C. PUC LEXIS 686 (N.C.U.C., June 24, 2003) (“...the Commission ...lacks jurisdiction to designate ETC status for CMRS carriers.... [North Carolina statute] G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction”); *In re Telecommunications Act of 1996*, 2002 WL 1277821, 2002 Va. PUC LEXIS 315, (Va. S.C.C., April 9, 2002) (“The Commission finds that § 214(e) (6) of the Act is applicable to Virginia Cellular's Application as this Commission has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation”); *In re Pine Belt Cellular, Inc.*, Docket U-4400, Alabama Public Service Commission, 2002 WL 1271460, 2002 Ala. PUC LEXIS 196 (March 12, 2002) (“it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt

**B. The Arguments of the Intervenors**

Intervenors' reliance on the Commission's Order in *In re: Establishment of Eligible Telecommunications Carriers Pursuant to Section 214(e) of the Telecommunications Act of 1996* is misplaced. See Commission Order No. PSC-97-1262-FOF-TP, issued October 14, 1997, in Docket No. 970644-TP. That order states, in pertinent part:

We believe that the requirements of the 1996 Act can be met initially by designating the incumbent LECs as ETCs. Upon consideration, we hereby designate the incumbent LECS (ILECs) as ETCs. LECs should continue to serve their current certificated service areas. All other carriers (non-ILECs) who wish to receive ETC status in the service area of a non-rural LEC should file a petition with the Commission for ETC status . . .

*Id.* at 4. In that order, the Commission also opined that "mobile carriers may serve those areas [where ALECs were prohibited from offering basic local telecommunications services within the territory served by a small LEC before January 1, 2001, unless the small LEC has elected price regulation], and may apply for ETC status." *Id.* at 4.

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companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC § 214(e)(6)").

Reliance on this statement to conclude that this Commission has jurisdiction to designate CMRS carriers as having ETC status is misguided. Simply put, the Commission cannot by fiat simply declare its own jurisdiction where, as the Florida Legislature has made clear, no jurisdiction exists.<sup>7</sup> *See, e.g., Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1<sup>st</sup> DCA 1982) (noting that even if an agency's policy concerns might be valid, "[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself.").

Intervenors' public interest argument must likewise fail. Intervenors argue that Florida's public interest would not be served by having competitive carriers, including CMRS providers such as petitioners, designated as ETCs in rural areas. They continue that this Commission is best situated to make the public interest inquiry. This argument is fundamentally flawed. It is only if this Commission has jurisdiction over CMRS carriers in the first instance that the Commission could exercise that jurisdiction to perform the inquiry proposed by Intervenors.

**C. Intervenors Run Afoul of *Cape Coral* and its Progeny**

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<sup>7</sup> We also note that the issue of the Commission's jurisdiction to determine ETC status for CMRS providers was not raised, litigated, or relevant to the holding in Order No. PSC-97-1262-FOF-TP, which designated local exchange companies in Florida as ETCs. We also note that in the time since that holding, Congress, through the enactment of Section 214(e)(6) to the 1996 Act, expressly authorized the FCC to make ETC designations of CMRS providers when states like Alabama, Florida, North Carolina, Virginia, and others lack jurisdiction over such carriers.

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**DOCKETS NOS. 030346-TP, 030413-TP**  
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The arguments of the Intervenors run counter to the clear teachings of *Cape Coral* and its progeny. Florida law makes clear that the Commission does not have jurisdiction over CMRS carriers. Even if there was doubt about that proposition, which the Florida Legislature has made clear there is not, such doubt would have to be resolved against finding jurisdiction. As the Florida Supreme Court made clear in *City of Cape Coral v. GAC Utilities, Inc., of Florida*:

All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute. This, of course, includes the Public Service Commission.... As such, the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State.... Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof,... and the further exercise of the power should be arrested.

281 So. 2d 493, 495-96 (Fla. 1973). *See also Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2002) ("any reasonable doubt regarding its regulatory power compels the PSC to resolve that doubt against the exercise of jurisdiction"); *Dept. of Transp. v. Mayo*, 354 So. 2d 359 (Fla. 1977) ("any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it"); *Schiffman v. Dept. of Professional Regulation, Board of Pharmacy*, 581 So. 2d 1375, 1379 (Fla. 1<sup>st</sup> DCA 1991) ("An administrative agency has only the authority that the legislature has conferred it by statute"); *Lewis Oil Co., Inc. v. Alachua County*, 496 So. 2d 184, 189 (Fla. 1<sup>st</sup> DCA 1986) ("Administrative agencies have only the powers delegated by statute").

The Commission has previously (and correctly) recognized the limited nature of its jurisdiction. *See In re: Complaint Against Florida Power & Light Company Regarding Placement of Power Poles and Transmission Lines*, Docket No. 010908-EI, Order No. PSC-02-0788-PAA-EI, Florida Public Service Commission, June 10, 2002; *In re: Complaint and Petition by Lee County Electric Cooperative, Inc. for an Investigation of the Rate Structure of Seminole Electric Cooperative, Inc.*, Docket No. 981827-EC, Order No. PSC-01-0217-FOF-EC, Florida Public Service Commission, January 23, 2001 (recognizing that any doubt as to the Commission's jurisdiction must be resolved against an exercise of jurisdiction).

The authority of this Commission is derived from state law as written by the Florida Legislature, and that authority is expressly limited as it pertains to CMRS providers. Regardless of the merits of the debate of state versus federal designation of ETC status for wireless providers, the Commission must remain cognizant of our role and not regulate beyond our specific mandate. Despite good intentions, we should avoid even the appearance that we are replacing the Legislature's judgment with our own.

Florida as a state certainly has an interest in universal service issues. That interest, however, does not create jurisdiction in this Commission to determine whether CMRS carriers should be granted ETC status (a status, we note, that is one of federal creation),<sup>8</sup> especially where the Legislature has specifically provided that the Commission does not have jurisdiction over CMRS providers.<sup>9</sup> As a creature of statute, this Commission is not free to operate according to its “own “inscrutable wisdom, ‘an administrative Frankenstein, once created, (acting) beyond the control of its Legislature creator.’” *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1<sup>st</sup> DCA 1980) (discussing the Parole Commission). Indeed, “[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself.” *Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1<sup>st</sup> DCA 1982).

**D. Conclusion**

Based on the foregoing, the Commission does not have jurisdiction over CMRS providers for purposes of determining eligibility for ETC status pursuant to 47 U.S.C. § 214(e).

**III. A DECLARATORY JUDGMENT OF “NO JURISDICTION” IS PROPER**

Section 120.565, Florida Statutes, governs the issuance of a declaratory statement. In pertinent part, that section provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or

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<sup>8</sup> We note that other states have an interest in universal service issues, notwithstanding that their utility commissions do not regulate CMRS providers. *See, e.g., N.C. Gen. Stat. A. § 62-110, § 105-164.4c and § 143B-437.40 (North Carolina); Virginia's Universal Service Plan (Va. S.C.C. Case Nos. PUC970135 and PUC970063) and Va. Code Ann. § 56-468.*

<sup>9</sup> Section 364.025, Florida Statutes, provides for alternative local exchange companies (now known as competitive local exchange companies by virtue of Chapter 2003-32, § 3, Laws of Fla., amending Section 364.02, Florida Statutes), which are “telecommunications companies” subject to Commission jurisdiction, to apply to the Commission for universal service provider and carrier of last resort status. Notably, no similar provision exists regarding CMRS providers.

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order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, Florida Administrative Code, further explains that: “a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.” The purpose of a declaratory statement by an administrative agency is to allow a petitioner to select a proper course of action in advance. *Novick v. Dept. of Health, Bd. of Medicine*, 816 So. 2d 1237 (Fla. 5<sup>th</sup> DCA 2002).

Petitioners have satisfied the requirements for the issuance of a declaratory statement by the Commission. At issue is the applicability of Chapter 364, Florida Statutes, which excludes CMRS providers from Commission jurisdiction. As CMRS providers seeking ETC status, which status is a prerequisite to being eligible to receive federal universal service funds, petitioners are “substantially affected persons” within the meaning of Section 120.565, Florida Statutes. Petitioners have stated with particularity their circumstances and have identified the statutory provision that applies to their circumstances.

Intervenors urge us to deny the petitions for declaratory statement. Intervenors first assert that to receive ETC status in the service area of a rural LEC, a non-ILEC must file a petition proposing an appropriate service area and demonstrating that designation as an ETC is in the public interest, a determination that they assert can properly be made only after a formal administrative hearing and not in a declaratory statement proceeding. They next assert that the petitions require a response that amounts to a rule stating that CMRS providers are not subject to the jurisdiction of the Commission for purposes of designation as an ETC. Finally, Intervenors assert that the petitions fail to allege an uncertainty about a Commission statute, rule, or order and thus, fail to meet the pleading requirements of Rule 28-105.001, Florida Administrative Code.

Intervenors’ arguments fail. Regarding their first assertion, where the Commission lacks jurisdiction, as it does here, it would be illogical for a party to seek to have the Commission exercise jurisdiction to do something it does not have the power to do. To exercise jurisdiction, the Commission would have to determine that the petitioners are telecommunications companies, a determination that is expressly precluded by the statute. As the Commission does not have jurisdiction to make the ETC designation for CMRS providers, it is not necessary for Nextel or ALLTEL to file an application that addresses the eligibility requirements to be designated an ETC.

We also disagree that we should deny the petitions for declaratory statement because the statement requested would amount to a rule. On numerous occasions, the Commission has resolved controversies about the scope of our jurisdiction in declaratory statement proceedings. *See In re: Petition of St. Johns Service Company for declaratory statement on applicability and effect of 367.171(7), Florida Statutes*, Order No. PSC-99-2034-DS-WS, issued October 18, 1999, in Docket No. 982002-WS; *In re: Petition of PW Ventures, Inc., for declaratory statement in Palm Beach*

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*County*, Order No. 18302, issued October 16, 1987, in Docket No. 870446-EU, *aff'd on other grounds, PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988).

Intervenors confuse the notion of a rule with the issue of jurisdiction. Commission jurisdiction over a matter either exists or it does not. It cannot be created or denied by a rule. Indeed, the Commission could only issue a rule where it has jurisdiction over the subject matter of the rule. Further, determining whether the Legislature has vested the Commission with jurisdiction is typically a one-time determination, whereas rulemaking is more appropriate for such matters as recurring issues, implementation of statutes, and codification of policy.

Finally, we dismiss the assertion that the petitions should be denied for failing to allege an uncertainty about a Commission statute, rule, or order. The petitions seek a statement that our statutes, rules, and orders are not applicable to ALLTEL or Nextel as CMRS providers, for the purposes of determining whether they are eligible to receive federal universal service funding. As set forth herein, we agree. And on the facts presented, this determination is properly made in a declaratory statement proceeding. We therefore conclude that the petitions satisfy the requirements for a declaratory statement.

Based on the foregoing, we grant the petitions and declare that Nextel and ALLTEL, as commercial mobile radio service providers, are not subject to the jurisdiction of the Florida Public Service Commission for purposes of designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e).

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Now, therefore, it is

ORDERED by the Florida Public Service Commission that the Petitions for a Declaratory Statement filed by Nextel & ALLTEL are granted. It is further

ORDERED that the substance of the Declaratory Statement is as set forth in the body of this Order. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission this 23rd Day of September, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: /s/ Kay Flynn

Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

This is a facsimile copy. Go to the Commission's Web site,  
<http://www.floridapsc.com> or fax a request to 1-850-413-7118,  
for a copy of the order with signature.

( S E A L )

CTM

Commissioner Baez dissents. Chairman Jaber dissents from the majority's decision with the following opinion:

Rule 28-105.001, Florida Administrative Code, states in part: "A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency." The circumstances brought before us in these two cases are not limited to the two wireless providers that have filed petitions for declaratory statement. Rather, our decision will impact not only all of the wireless carriers and other telecommunications service providers in Florida, but, more importantly, will impact the state's

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overall universal service policy. This is a case of first impression, and will result in a policy of general applicability. I do not believe a declaratory statement is the appropriate mechanism for

deciding this very important issue. I would rather establish an expedited proceeding that allows us to hear from other providers in the form of testimony, if appropriate, or legal briefs on federal and state law regarding ETC status and the impact of such on Florida's stance on universal service. In making a decision regarding the jurisdictional issues in this matter, it is critical to fully understand the ramifications of our decision on the size and applicability of the federal universal service fund to Florida's ratepayers. The declaratory statement process does not allow an opportunity for that critical review. Without input from all affected parties on the legal and policy implications of this decision, I am uncomfortable with the conclusion that we do not have jurisdiction in this matter. For these reasons alone, I dissent.

**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.