

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

In the Matter of)	
)	
Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers)	RM-10822
)	
Federal-State Board on Universal Service)	CC Docket No. 96-45
)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby submits these comments in response to the Federal Communications Commission’s (“Commission’s”) Public Notice¹ inviting comment on the Western Wireless Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers.²

I. INTRODUCTION AND SUMMARY

Nextel supports initiatives that seek to decrease inflation of the Universal Service Fund (“USF”) and make the USF program economically rational. Nextel is a Commercial Mobile Radio Service (“CMRS”) provider with approximately 12 million customers in markets throughout the United States. Nextel, along with Nextel Partners, Inc., offers Nextel-branded digital mobile CMRS service in 293 of the top 300 U.S. metropolitan areas. Each pays a

¹ Request Amendment of the Corporation Commission's Rules regarding the Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers, *Public Notice*, RM-10822, CC Docket No. 96-45 (rel. Nov. 19, 2003) (“Public Notice”). In response to a request by CenturyTel, Inc., the Commission granted an extension of time to file comments and reply comments until January 16, 2004 and February 13, 2004, respectively. Request Amendment of the Corporation Commission's Rules regarding the Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers, *Order*, RM No. 10822, CC Docket No. 96-45 (rel. December 18, 2003).

significant and increasing mandatory contribution to the federal USF pool. Indeed, Nextel's contributions to the federal USF have more than quadrupled over the last five years as its revenues and subscriber base have grown. Like many competitive carriers, Nextel is concerned about growth of the USF and carrier assessment increases over the past several years, particularly given the possibility that increased payments to the fund (resulting in higher prices for wireless consumers) could dampen demand for wireless service. Thus, Nextel has a keen interest in USF reform and has taken a global, policy-oriented view that focuses on the economic efficiency of both USF collection and distribution mechanisms.³ The Commission has the ability to support necessary services at affordable rates as well as to promote competition and economically efficient investment depending on the policies and rules that it ultimately adopts for the USF program.

Nextel supports Western Wireless' Petition for Rulemaking as just one of the approaches the Commission can take in addressing continuing demands on fund growth. Western Wireless' Petition delves down to the root of the issue rather than reflexively blaming competition and

² Western Wireless Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, RM-10822, CC Docket No. 96-45 (filed October 30, 2003) ("Petition").

³ See Comments of Nextel Communications, Inc., CC Docket No. 96-45, at 20 (filed Feb. 28, 2003) (urging the Commission to "consider elasticity of demand when deciding if, and how, it should fundamentally change the current revenue-based USF contribution methodology."); Reply Comments of Nextel Communications, Inc., CC Docket No. 96-45, at (filed April 18, 2003) (noting that "USF assessments should reflect the conditions of demand for different telecommunications services, which would translate into the USF assessment on a particular service being lower for those services that experience higher elasticity of demand in the final market."); Comments of Nextel Communications, Inc., and Nextel Partners, Inc., CC Docket No. 96-45, at 14 (filed May 5, 2003) (noting that the Commission must ensure "that universal service subsidies are explicit and *portable*, which in turn has the important public policy advantage of continuing to encourage new entrants to compete more vigorously by undermining the advantage

competitive service providers for destabilizing the USF. Western Wireless asks the Commission to examine whether rate of return regulation is in part responsible for the growth of USF funding demands and whether the Commission should consider an alternative to ILEC embedded cost recovery on a rate-of-return basis that that may be more attuned with today's competitive marketplace.⁴ Western Wireless advocates eliminating the regulatory paradigm that shields ILECs from the consequences of their own inefficient operation. Nextel supports such a rulemaking to further examine these matters.

II. THE COMMISSION SHOULD EXAMINE ALTERNATIVES TO CONTINUING RURAL ILEC SUPPORT ON RATE OF RETURN CALCULATIONS.

The Western Wireless Petition requests the Commission to initiate a rulemaking to eliminate traditional rate of return regulation for all incumbent LECs and, over time, replace it with a new system based on forward-looking costs.⁵ Western Wireless states that the “time has come to begin making the changes necessary to focus universal service policy on ‘sufficient funding of customers, not providers.’”⁶ According to the Petition, the current rate of return mechanism that uniquely advantages rural ILECs “creates opportunities for waste, fraud and

ILECs have traditionally enjoyed by virtue of their exclusive access to implicit universal service subsidies and guaranteed recovery of their investments.”).

⁴ Petition at 1 (asking the Commission “to facilitate the transformation of the local telecommunications market from a monopoly to a competitive environment by replacing a highly inefficient, non-competitive system of regulation with an efficient, competitively neutral approach to regulating RLECs.”).

⁵ Petition at 17.

⁶ *Id.* (citing *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000)) (emphasis in original).

abuse and causes the unwarranted expansion of the universal service fund, harming consumers nationwide who ultimately pay into the fund.”⁷

Western Wireless’ Petition makes a strong case that the current universal service funding system may have the effect of encouraging inefficient operations by rural ILECs, and these inefficiencies have a societal cost – they ultimately must be paid for by all users of interstate telecommunications services. And, the Commission has recognized that rate of return regulation “creates a powerful incentive for carriers to ‘pad’ their costs, regardless of whether additional investment is necessary or efficient.”⁸ These inefficiencies may even affect the success of intermodal competition. The Commission itself previously has noted the need for additional USF distribution reform aimed at eliminating the virtual guarantees rural ILECs have in the USF program.⁹ The Western Wireless Petition is an appropriate vehicle for this purpose.¹⁰

⁷ *Id.* at 18.

⁸ Policy and Rules Concerning Rates for Dominant Carriers, Part 1 of 3, *Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873, ¶ 30 (1989).

⁹ According to the Commission, the pre-1996 USF mechanisms based on embedded costs “neither ensure that ILECs are operating efficiently nor encourage them to do so” and are “contrary to sound economic policy.” Federal-State Board on Universal Service, *First Report and Order*, 12 FCC Rcd 8776, ¶ 203 (1997) (“*Universal Service Order*”). The Commission thus found that, for small rural LECs as well as for non-rural LECs, “basing support on forward-looking economic cost . . . will require telecommunications carriers to operate efficiently and will facilitate the move to competition in all telecommunications markets.” *Id.*

¹⁰ Nextel notes that several rural ILECs filed initial comments in opposition to the Petition on or around the first-established comment date. Each of the comments suggested, in effect, that there is no need to institute a rulemaking along the lines of that urged by Western Wireless because many of the issues Western raises are already under consideration in other USF proceedings. *See, e.g.*, Comments of the Montana Telecommunications Association, CC Docket No. 96-45, at 3 (filed December 16, 2003) (“The Commission should deny WWC’s Petition if for no other reason than the host of currently pending proceedings before the Commission which address issues raised by WWC relating to investment in, and provision of, quality telecommunications

Nextel agrees that the current USF funding mechanism is inefficient and is a matter of serious concern. Nextel already is on record in the USF Portability Proceeding stating, “there simply is no justification for the continued ‘protection’ of rural ILECs through the USF.”¹¹ Furthermore, ILECs do not have any legal right to continue to collect embedded network costs through the universal service assessments that are imposed on other carriers.¹² Fundamentally, continuing a policy that requires competitors to make rural ILECs whole for their investments is contrary to the Commission’s commitment to ensure that universal service subsidies are explicit and to encourage new entrants to compete with ILECs in rural and high cost areas.

Nextel thus supports examination of alternative ways to modify how the need for USF support is identified, how support is calculated and how assessments are determined. More work needs to be done to ensure that USF support is truly necessary (particularly at the levels currently projected), and any conclusions that USF support is needed must be based on readily verifiable, quantifiable, and rational economic factors. Nextel thus supports the Petition insofar as it requests the Commission to initiate a rulemaking to examine whether elimination of rate of return regulation will assist in creating necessary efficiencies in rural ILEC operations that redound to the benefit of consumers in rural and high cost areas.

services to rural America.”). Each ILEC opposition ignores, however, that the main issue raised in the Western Wireless Petition -- rural ILEC embedded cost entitlement -- is not under consideration in any pending proceeding.

¹¹ Comments of Nextel Communications, Inc., and Nextel Partners, Inc. CC Docket No. 96-45, at ii (filed May 5, 2003).

¹² See, e.g., *Universal Service Order*, 12 FCC Rcd at ¶ 203 (recognizing that universal service needs should be based on forward-looking economic cost).

III. CONCLUSION

For the reasons set forth herein, Nextel supports Western Wireless' request that the Commission initiate a rulemaking proceeding to examine whether rate of return regulation of rural ILECs should be eliminated as it affects the amount of funding rural ILECs receive from the federal universal service fund.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

/s/ Laura H. Phillips

Laura H. Phillips

Laura S. Gallagher

Laura L. Holloway
Vice President – Government Affairs
NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, Virginia 20191

DRINKER BIDDLE & REATH LLP

1500 K Street, N.W., Suite 1100

Washington, D.C. 20005-1209

(202) 842-8800

Its Attorneys

January 16, 2004