



INDIANA UTILITY REGULATORY COMMISSION
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March 31, 2004

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APR 2 2004

FCC - MAILROOM

Marlene H. Dortch
Office of the Secretary
FCC
445 - 12th St, SW
Washington, DC 20554

Irene Flannery
Vice President
High Cost & Low Income Division
Universal Service Admin Co.
2120 L St, NW, Ste 600
Washington, DC 20027

Re: CC Docket 96-45, USF Certification as Required by 47 C.F.R. § 54.314
for NPCR, Inc. d/b/a Nextel Partners

Dear Ms. Dortch and Ms. Flannery:

On March 17, 2004, the Indiana Utility Regulatory Commission (IURC) issued an Order in Cause No. 41052-ETC 43 approving the request by NPCR, Inc. d/b/a Nextel Partners to be designated an Eligible Telecommunications Carrier. A copy of that Order is enclosed. Nextel Partners, a wireless carrier, was authorized to serve as an ETC in selected study areas of rural telephone companies. Those study areas are designated in Petitioner's Exhibit 7, a copy of which is included.

On March 25, 2004, Nextel Partners filed with the Commission a completed application seeking certification from the IURC that Nextel Partners is eligible to receive federal high-cost loop support. A copy of that completed application is enclosed.

On March 31, 2004, the IURC issued an Order in Cause No. 42067 HLS-43 declaring Nextel Partners eligible to receive federal high-cost loop support. A copy of that Order is enclosed.

Based on the IURC's March 31, 2004 Order, and on behalf of the IURC, I now certify to the FCC and USAC that NPCR, Inc. d/b/a Nextel Partners will be using federal support (which includes high cost loop support, local switching support, high cost support received pursuant to the purchase of exchanges, high cost model support, and hold harmless support) only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254 (e) of the Communications Act.

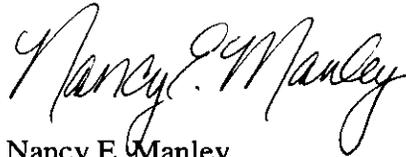
This certification applies only for support provided in calendar year 2004.

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If you require further assistance, please call me at (317) 232-2716.

Sincerely,

A handwritten signature in black ink that reads "Nancy E. Manley". The signature is written in a cursive style with a large, prominent "N" and "M".

Nancy E. Manley
Secretary to the Commission

Enclosures:

Order in Cause No. 41052-ETC 43, approved March 17, 2004

Petitioner's Exhibit 7, detailing affected rural study areas

IURC Application Form for high cost funding certification

Order in Cause No. 42067 HLS-43, approved March 31, 2004

cc: Nextel Partners
Office of Utility Consumer Counselor

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION & INSPECTOR

ORIGINAL
APR 2 2004
FCC-MAIL ROOM
CAUSE NO. 41052-ETC-43
APPROVED: MAR 17 2004

IN THE MATTER OF THE DESIGNATION)
OF ELIGIBLE TELECOMMUNICATIONS)
CARRIERS BY THE INDIANA UTILITY)
REGULATORY COMMISSION PURSUANT)
TO THE TELECOMMUNICATIONS ACT OF)
1996 AND RELATED FCC ORDERS, AND IN)
PARTICULAR, THE APPLICATION OF)
NPCR, INC. d/b/a NEXTEL PARTNERS)
TO BE DESIGNATED)

BY THE COMMISSION:
David E. Ziegner, Commissioner
Lorraine Hitz-Bradley, Administrative Law Judge

On April 21, 2003, NPCR, Inc. d/b/a Nextel Partners ("NPCR" or "Petitioner") filed its Verified Petition for Designation as an Eligible Telecommunications Carrier ("ETC"). By its petition, Petitioner requested the Indiana Utility Regulatory Commission ("Commission") to designate it as an ETC pursuant to 47 U.S.C. § 214(e), for the areas described in the petition.

Pursuant to notice duly given as provided for by law, a hearing was held at 9:30 a.m. on Thursday, October 2, 2003, in Room TC 10 of the Indiana Government Center South, Indianapolis, Indiana 46204. Prior to that hearing, Clay County Rural Telephone, Inc. ("CCRTC"), Indiana Exchange Carriers Association, Inc. ("INECA"), Smithville Telephone Company ("Smithville") and Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems ("Verizon") petitioned to intervene in these proceedings. The requested interventions were granted.

At the hearing Petitioner offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 2 (Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6, as Petitioner's case-in-chief, which Exhibits were admitted into the record. The Petitioner's witnesses were cross-examined by all parties to these proceedings. CCRTC offered CCRTC's Exhibit 1 (Prefiled Direct Testimony of its witness Brad Welp) and Exhibit 2 (Petitioner's Response to CCRTC's data request), which were admitted into the record. CCRTC's witness was cross-examined by all parties. INECA offered INECA's Exhibit 1 (Prefiled Testimony of its witness Bruce Hazelett) which was admitted into the record. INECA's witness was cross-examined by all parties. The Indiana Office of Utility Consumer Counselor ("OUCC") offered OUCC's Exhibit 1 (the Prefiled Testimony of its witness Ronald Keen) which was admitted into the record. The OUCC witness was cross-examined by all parties. Smithville and Verizon did not submit any Exhibits or offer any testimony. The Presiding Officers also permitted the Petitioner to file a late filed Exhibit [Petitioner's Exhibit 7 (Late Filed)] revising the areas for which it is seeking eligible

In addition to offering the above nine universal services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and Link Up" programs as a condition precedent to receiving federal universal service support. FCC Rule 54.201(d)(2) also requires ETCs receiving federal universal service support to publicize the availability of the nine universal services and the Lifeline and Link Up programs and the charges therefore using media of general distribution. Pursuant to this Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana must also file proposed Lifeline/Link Up tariffs and boundary maps depicting the areas for which ETC designation is sought.

Finally, because NPCR seeks to be designated as an additional ETC in rural service areas in Indiana, this Commission must also make a specific determination as to whether the public interest would be served by designating more than one ETC in the specified rural service areas. Specifically, the federal Telecommunications Act provides that:

[U]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of Paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2).

This Commission has not yet entered an order interpreting or applying the above "public interest" test to any request for designation as an additional, competitive ETC in rural service areas or in any prior generic proceedings. Accordingly, this case, and another pending case (IURC Cause No. 41052-ETC-45, filed by the Centennial companies) are cases of first impression in Indiana.

4. Evidence Admitted

A. NPCR Testimony

The Petition, which was admitted into the record as Petitioner's Exhibit 1 and incorporated herein by reference, states that NPCR provides all nine of the universal services or functionalities required by FCC Rule 54.101(b). The Petition also states that NPCR will provide Lifeline and Link Up discounts to qualifying low-income customers as required by FCC Rules 54.405 and 54.411 if it is designated as an ETC in this proceeding.

NPCR also presented evidence to support its compliance with each of the elements required under federal law for designation as an ETC. At the hearing, NPCR offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 1A (a copy of its amended petition), Exhibit 2

locations and over the Internet. Mr. Peabody included a copy of NPCR's planned advertising as an exhibit to his testimony.

Because certain of the areas covered by the application were for areas served by RTCs, Mr. Peabody testified to the specific additional requirement that the Federal Act requires, *i.e.*, that the state commission must find that such additional ETC designation is in the "public interest." Mr. Peabody, relying on FCC directives, indicated that the Commission should presume in its analysis that "competition benefits consumers, and that citizens throughout the state are entitled to the benefits of competitive universal service." Moreover, he indicated that the Commission should look to "whether consumer benefits will be outweighed by demonstrated adverse impacts on consumers resulting from the designation." Thereafter, Mr. Peabody explained his views as to why NPCR met these standards, relying upon his observations that competitive service providers are "hard to find" in rural areas and that such areas lack choice of providers. Citing the need to provide a "level playing field" and that wireless providers are the "only real chance at bringing meaningful competition to these service areas," Mr. Peabody indicated that access to federal USF disbursements will allow NPCR to expand its network throughout the state and otherwise allow CMRS infrastructure to bring universal service and advanced services to rural consumers. Moreover, he suggested that, since NPCR provides mobile service, NPCR's service is more "universal" than the telephone companies.

In closing, Mr. Peabody testified to the level of service that NPCR provides vis-à-vis other wireless service providers. According to Mr. Peabody, if NPCR cannot meet "its customers' expectations for customer service, the customers vote with their feet" with respect to their mobile communications needs. Further, Mr. Peabody indicated that ETC designation will facilitate the continued role of NPCR in providing communications services to a variety of customers, including public schools, libraries, and local and state government agencies, specifically law enforcement. Thus, Mr. Peabody urged the Commission to designate NPCR as an ETC.

Mr. Wood testified on behalf of NPCR regarding the "public interest" aspect of the NPCR petition. Relying upon both his background as a consultant on economic and regulatory matters and his telephone company and IXC industry experience, Mr. Wood indicated he was familiar with the application of universal service mechanisms at both the state and federal levels. With respect to the public interest determination, Mr. Wood noted that he believed that RTCs involved in proceedings in other states had sought to "significantly broaden the scope of review and have attempted to put competition on trial." Such efforts were, in Mr. Wood's view, a distraction since the analysis should focus on the "facts of [NPCR's] Petition." Accordingly, Mr. Wood opined that designating NPCR as an additional ETC in the affected RTCs' service areas would have both short term and long term benefits.

With respect to the short term, Mr. Wood testified consumers would have a choice of technology and suppliers using different technology, along with a "broader array" of services and pricing. Long-term, according to Mr. Wood, consumers would benefit from the "competitive market forces" that he suggested create incentives for such carriers to be "more efficient and responsive to customer needs." Mr. Wood relied upon FCC pronouncements to support his

cover the cost of providing service. According to Mr. Keen, the primary interest of universal service is to ensure the “ubiquitous availability of quality telephone services in rural service areas” that are “comparable to services provided in urban areas at comparable and affordable rates.” The low population densities in rural areas, in Mr. Keen’s view, generally meant longer distances between service locations, increasing the cost of providing service in those areas. He indicated that federal USF disbursements were intended to keep end user rates affordable despite those higher costs. Thus, according to Mr. Keen, if existing rural ETCs lose large numbers of customers to new carriers designated as additional ETCs in the same rural service areas, it might result in higher end user rates or higher universal service funding requirements, a result that could harm, rather than further, universal service goals. Mr. Keen recognized the difficult public interest task assigned to this Commission – “on the one hand, promoting competition” that will offer “additional and improved service options to rural consumers,” while on the other hand, keeping local telephone service rates in rural areas at levels that are “fair, reasonable, just, affordable, and comparable to rates charged in urban areas for the same or comparable telecommunication services.”

Mr. Keen also identified specific concerns that the OUCC had with respect to NPCR’s service offering. Mr. Keen explained that NPCR was not offering at least one flat rate local service offering with unlimited local calling, and was not offering equal access (*i.e.*, toll presubscription) to toll providers. Mr. Keen testified that he was concerned about the comparability of NPCR’s local usage plans with those of the ETCs currently serving in the areas where NPCR seeks designation. Mr. Keen also expressed concerns with respect to quality of service.

Mr. Keen indicated that, in designating an additional ETC, the Commission should consider what consumers view as a minimum service standard, augmented by technology-specific additions. The OUCC believed an ETC designation carries with it the obligation to meet or exceed service provision and service quality requirements and expectations. Based on the lack of facts in the record, Mr. Keen did not believe that NPCR had demonstrated that the public interest would be served by its designation as an additional ETC in the various RTCs’ service areas.

Because the application also raised far-reaching issues, Mr. Keen suggested that the Commission conduct a general investigation regarding additional ETC designations in RTCs’ service areas prior to granting any request for such designation. Specifically, Mr. Keen identified thirteen specific policy issues that he believed should be addressed as part of such proceeding by the Commission. These issues include:

1. What factors should be considered in determining whether the public interest would be served by granting ETC status to multiple carriers in any of Indiana’s rural service areas;
2. Whether competitive service options would increase in any meaningful way as a result of granting ETC status to multiple telecommunications carriers in rural service areas;

of other parties' witnesses at a public Evidentiary Hearing.

C. INECA Testimony

The testimony admitted on behalf of INECA was by Bruce Hazelett, president of INECA. Mr. Hazelett suggested that the Commission should undertake its own rigorous review as to whether NPCR had demonstrated that it could comply with the service offerings required of all existing ETCs and comply with Commission oversight and reporting requirements applicable to all the INECA member companies. Mr. Hazelett noted statements of two FCC commissioners to support INECA's view. According to Mr. Hazelett, if the Commission is inclined to take action now, the Commission should make clear that any public interest finding be conditional. In Mr. Hazelett's view, this latter request was reasonable because of the overarching public policy issues being addressed at the federal level regarding federal USF disbursements to second ETCs and because of the potential ramifications of such actions on Indiana-specific commitments to universal service.

Mr. Hazelett explained that a telecommunications carrier must be designated as an ETC by the Commission in order for that entity to be eligible to receive federal USF disbursements, pursuant to §214 of the Federal Act. Mr. Hazelett pointed out that the plain and unambiguous language of Section 214(e)(2) states that the Commission is not required to designate an additional ETC within the service area of an RTC (such as each of the INECA member companies). Moreover, Mr. Hazelett expressed his view that if the Commission were inclined to grant ETC status to an additional entity for an RTC's service area, the Commission was still required to find affirmatively that such designation is "in the public interest." He attached the applicable sections of Section 214 to his testimony for reference to support his assertion that the Federal Act uses the term "shall" with respect to need for any public interest finding.

Mr. Hazelett explained that the service area required for designation purposes is the RTC's "Study Area," since no affirmative action had been taken to establish a different geographic area by the FCC in conjunction with its Joint Board addressing universal service. The term "Study Area," according to Mr. Hazelett, is the entire geographic territory of the specific INECA member company within which it operates and is that which is used for purposes of establishing its federal USF disbursements.

Mr. Hazelett noted that, in addition to the requirement for an affirmative public interest determination, an ETC is also required to demonstrate to the Commission the following:

1. First, the applicant's service must meet nine specific service criteria set forth by the FCC. The service must provide the following: 1) voice grade access to the public switched telephone network; 2) local usage free of charge; 3) dual tone multi-frequency signaling or its equivalent; 4) single party service or its equivalent; 5) access to emergency services, such as 911; 6) access to operator services; 7) access to interexchange service; 8) access to directory assistance; and 9) toll limitation for qualifying low-income customers -- toll limitation or toll restriction and both Lifeline and Link-Up.

relevant to the factual findings and public interest determination that the Commission must make, and it violates the principle of technological neutrality, an additional principle of universal service adopted by the FCC. In Mr. Hazelett's view, technological neutrality demands that all ETCs be held to the same standard regardless of the technology they use.

Mr. Hazelett attached to his testimony all of the responses from NPCR to INECA's interrogatories. He expressed his concern that such responses provided scant information regarding the ETC qualifying criteria that NPCR is obligated to demonstrate, and that, based on those answers, it appeared that the NPCR believed that the Commission should simply "rubber stamp" its application. Such result, according to Mr. Hazelett, was not a position that INECA believed properly reflected the public interest determination required by the Commission.

He noted NPCR's response that it did not have a service offering comparable to the unlimited local calling plan offered by the INECA member companies and that all calls go against all of the plans' "bucket of minutes." Mr. Hazelett noted that "local measured service" ("LMS") was the exception to the rule in Indiana since the INECA member companies offer their universal service package based on unlimited calling and with toll presubscription (which NPCR does not offer). Since NPCR admitted, in Mr. Hazelett's view, that it was providing local exchange service, a substantial question of policy was raised, as this may very well be the first time that the Commission is effectively being asked to agree to the use of LMS by an ETC. Since service parity for consumers was, in Mr. Hazelett's view, a relevant policy consideration for the Commission, this issue could be addressed by requiring the offering and marketing by NPCR of at least one calling plan with unlimited local calling and toll presubscription (*i.e.*, equal access) for a flat monthly fee within a local calling area no smaller than that provided by the RTC. He further suggested that such a condition was permissible, since the FCC required only some amount of local usage to be included in the monthly charge, but had not established the amount of local usage that was required. With respect to toll presubscription, he was not aware of any decisions that would preclude such requirement as a condition for additional ETC status.

The second example Mr. Hazelett provided was based on his position that the ability to offer service also required the ability to terminate its end users' calls, and that capability required that necessary terms and conditions be in place between carriers. Mr. Hazelett supported this position by relying upon the policy established in I.C. 8-1-2-5. Mr. Hazelett indicated that NPCR had stated it had "interconnection arrangements" with only Ameritech and GTE, but NPCR has not stated that it had any arrangements with the INECA companies. Mr. Hazelett also noted that there had been no demonstration that NPCR planned to serve the entire service area of each of the affected INECA member companies.

Third, Mr. Hazelett noted that NPCR indicated that the call drops off once a NPCR customer making a call exits the NPCR network. This result, in Mr. Hazelett's view, raised the factual issue as to whether a NPCR customer actually had a dedicated path for its communications as required by the FCC's rules. Fourth, and in response to INECA's Interrogatory No. 6, NPCR indicated that it used switches in Kentucky (somewhere in Louisville) and in Iowa (somewhere in Des Moines) to provide necessary switching. According to Mr. Hazelett, even if NPCR were to be able to demonstrate its qualifications for ETC status, a

indicated that INECA would support the type of general investigation that the OUCC had suggested in the Cause addressing the application of the Centennial Companies for additional ETC status.

Although Mr. Hazelett recognized that under current FCC rules, the INECA member companies would not be financially affected by the Commission granting NPCR's request, he indicated that INECA believed that the Commission was still required to provide a proper foundation for its determinations regarding second ETCs within an RTC's service area, and require a demonstration by the applicant of compliance with the same principles, obligations, and service offerings that the INECA member companies were required to make. This parallelism, according to Mr. Hazelett, ensures not only that all universal service providers in rural areas of Indiana are held accountable for the offerings they make, but it would also ensure fundamental fairness and acceptance of the responsibilities that go hand-in-hand with the title of ETC within rural areas of Indiana. This result, according to Mr. Hazelett, was important because there is an on-going public policy debate at the federal level regarding the federal universal service mechanism and USF disbursements being made to second ETCs. According to Mr. Hazelett, the overarching issue is whether the concept of second ETCs within a rural, higher cost to serve area (such as those served by RTCs) makes rational sense. The debate (according to Mr. Hazelett) continues with asking whether it was fundamentally fair to allow second ETCs to receive disbursements without a cost-based showing (such as the incumbent RTC telephone companies provide) and the resulting adverse impact that such policy had on the overall size of the federal USF. Mr. Hazelett noted that the size of the federal USF raised thorny issues associated with the amount of funding that must be generated to ensure that proper levels of USF funding are available for disbursement, and the push back created by carriers required to fund that amount. According to Mr. Hazelett, among the changes in the federal USF that are being discussed are rule modifications that would require state responsibility for USF funding to additional ETCs in areas served by RTCs. These issues, in Mr. Hazelett's view, only highlighted the on-going federal debate, and demonstrated why any decision made in this proceeding must reflect the unsettled nature of the current federal USF debate.

Mr. Hazelett requested that any public interest determination that would provide the basis for granting NPCR's request be made conditionally, so that the Commission could revisit it. Mr. Hazelett indicated that such approach was consistent with the Commission's desire to ensure that its policies are sufficiently flexible to accommodate future regulatory changes, as well as the discretion provided to it under the Federal Act in the event that applicable rules governing designation and funding of ETCs are modified.

D. CCRTC Testimony

CCRTC offered the pre-filed testimony of Bradley W. Welp, the company's General Manager. Mr. Welp testified regarding the size of CCRTC in terms of access lines compared to larger carriers in the State. Additionally, Mr. Welp testified that CCRTC currently received \$83.5029 per access line in Federal USF Support. Mr. Welp also testified about CCRTC's plant and the rates it charges its customers which are, depending on the exchange, \$16.50 per month or \$10.75 per month, before various additives. Mr. Welp also testified that CCRTC's customers have access to advanced telecommunications services and that the company provides voice

Mr. Peabody also challenged INECA's concerns regarding the ability for NPCR to lawfully terminate traffic to the INECA companies, since the agreements in place are only between NPCR and Ameritech and GTE. Mr. Peabody stated that its arrangements are with tandem operators and that these arrangements offer LATA-wide termination.

Mr. Peabody next addressed what he characterizes as "service area" issues. Mr. Peabody stated that NPCR licenses cover all of the affected RTCs' Study Areas and that the FCC does not require NPCR to serve every customer throughout a study area at the time of designation. With respect to concerns regarding what a "reasonable request" for service is, Mr. Peabody noted that some requests may simply require the offering to the customer of a handset while the need to erect a tower to serve a customer would be unreasonable.

Mr. Peabody also stated that the FCC has concluded that federal USF funding levels are for it and the Joint Board to decide, not the Commission. Mr. Peabody rejected the concerns raised by INECA regarding the public interest analysis provided by NPCR, noting that its rationale included more than simply competition. Mr. Peabody stated that the appropriate inquiry is whether there is anything about these RTC areas that justifies refusing to provide those customers the full benefits of competition promised by Congress. Mr. Peabody noted that NPCR wants to utilize and expand its infrastructure, and that action provides greater innovation and service incentives to LECs. Mr. Peabody stated that the OUCC's concerns regarding NPCR's compliance with LEC requirements were a "red herring," since there are differences in service offerings, and that is not relevant to ETC designations. Similar expressions were made by Mr. Peabody with respect to CCRTC, stating that NPCR's designation as an ETC has been shown to "advance competition, improve services, and expand the availability of universal service."

Mr. Peabody concluded that the FCC has made clear that the public interest determination "should examine whether consumer benefits from designation outweigh demonstrated adverse impacts on consumers" and access to federal USF monies is required to ensure a level playing field. With respect to consumer benefits, Mr. Peabody referenced NPCR's expanded local calling areas and nationwide calling, as well services outside the core list of universal service such as Internet, email and text messaging. Mr. Peabody reiterated prior testimony regarding the quality of NPCR's service, and benefits from competition as a basis for the Commission to find that the public interest would be served by granting NPCR's ETC application.

Mr. Wood's rebuttal offered similar responses to the other parties' testimony. Characterizing the positions of INECA and CCRTC as "well worn arguments," he suggested that neither of these parties has presented fact or sound policy for their positions and that state regulators and the FCC have rejected their positions. Mr. Wood contended that the parties were seeking to "re-litigate" FCC decisions and asking the Commission to "ignore" portions of the FCC's May, 2001 USF decision. According to Mr. Wood, the relevant inquiry is whether NPCR offers "services that provide benefits to consumers" and whether there is "some issue fact or issue that is specific to [NPCR], or to the service areas within which it seeks an ETC designation in Indiana, that would outweigh those benefits."

fund is to deny applications by competitive carriers for ETC status is disingenuous at best” since these policies were adopted based on the requests of RTCs. Characterizing “assurances of cost recovery in rural areas” as a “gift from the FCC” not present in a competitive market, Mr. Wood recognized that the “transition mechanism” is costly in the short term but it “can gradually wean the incumbent rural LECs over the period of time that it is in effect.”

Mr. Wood characterized INECA’s observation regarding state participation in the federal USF funding process as a “scare tactic.” He stated that, based on his experience and participation in the process, no serious discussion of such outcome is taking place. Even though NPCR is providing service today, Mr. Wood noted that NPCR is committing to the ability to provide universal service, something it could not do absent federal USF disbursements. Mr. Wood stated that withholding federal USF monies to NPCR would not reflect how rural LECs constructed their networks over time and “even now, ILECs that have been providing service for over a century do not have ubiquitous networks.” Consequently, the approach sought by NPCR was not fundamentally different, according to Mr. Wood.

With respect to utilizing the federal USF monies in Indiana, Mr. Wood stated that this issue is not of concern since the Universal Service Administrative Company (“USAC”) has responsibility for fund distributions as well as auditing powers, the Commission has the ability to monitor this issue in its annual certification process, and the FCC has the authority to impose its own measures upon wireless licensees such as NPCR. Similarly, considerations regarding the need for cost-based showings by additional ETCs are not necessary, since the FCC and Joint Board are looking into this issue. If the concern is that the wireless provider has a lower cost structure than the LEC, according to Mr. Wood, that concern has “no validity from a public interest standpoint” because that advantage is not created by the USF portability rules and any advantage would “only encourage accelerated deployment of network facilities by the more efficient provider.” Thus, Mr. Wood criticized INECA’s concern by not explaining why the public interest would be served by “discouraging investment by a more efficient provider while encouraging investment by a less efficient provider.” Mr. Wood also cited several public policy questions that he suggested highlight his concerns

Why is it in the public interest for wireline carriers to serve these geographic areas at all? Why is it in the public interest to delay network deployment for the more efficient carrier? Why is it in the public interest to support, into perpetuity, the network of the less efficient carrier? Why should the designation of [NPCR] (one of those potentially lower cost providers) as an ETC be postponed while these conceptual issues are being debated in another forum?

For similar reasons, Mr. Wood disagreed with CCRTC’s statements regarding non-cost based showings, suggesting that concerns regarding “cream skimming” have already been addressed by the FCC, and that CCRTC was given the ability to disaggregate its federal USF disbursements if it so chose. Finally, Mr. Wood disagreed with INECA’s suggestion that the public interest finding be made “conditional” since, according to Mr. Wood, the “proper course of action in this case is to apply the law as it exists today” and he expected that if changes in the

universal service offering. 47 C.F.R. § 54.101(a)(2). The FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, and has declined to require that ETCs offer unlimited local usage.¹ NPCR will include local usage in its universal service offerings. (Pet. Ex. 3, p. 8.)

iii. 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, carriers that provide signaling that is functionally equivalent to DTMF meet this service requirement. 47 C.F.R. § 54.101(a)(3). NPCR uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. (Pet. Ex. 3, p. 8.)

iv. 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. 47 C.F.R. § 54.101(a)(4). *Universal Service Order*, ¶ 62. NPCR meets this requirement by providing a dedicated message path for the length of all customer calls. Although INECA witness Hazelett questioned whether NPCR provided this supported service (INECA Ex. 1, p. 8), Mr. Hazelett admitted on cross-examination that NPCR provides a dedicated message path in compliance with 47 C.F.R. § 54.101(a)(4). (Tr. 180.)

v. Access to emergency services. The ability to reach a public safety answering point ("PSAP") by dialing 911 is a required service in any universal service offering. Enhanced 911 or E911, which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a PSAP is capable of receiving and utilizing such information, and requests the delivery of such information from a wireless provider. *Universal Service Order*, ¶¶ 72-73. The record reflects that NPCR currently provides all of its customers with access to emergency services by dialing 911 in satisfaction of this requirement. (Pet. Ex. 3, p. 9.) In addition, NPCR has deployed Phase I and Phase II E911 service requests from 17 PSAPs. (Pet. Ex. 3, p. 9.) NPCR is required to continue to implement Phase I and Phase II E911 requests in accordance with FCC rules.

vi. 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. 47 C.F.R. § 54.101(a)(6). *Universal Service Order*, ¶ 75. NPCR demonstrated it meets this requirement by providing all of its customers with access to operator services provided by either the Petitioner or other entities (e.g. LECs, IXCs, etc.). (Pet. Ex. 3, pp. 9-10; Pet. Ex. 5, p. 7.)

vii. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47

¹ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*")

Petitioner's Exhibit 7 (Late Filed Revised) eliminated four rural LEC areas currently served by CCRTC from its proposed ETC service territory. NPCR indicated that it is licensed to provide service throughout all rural LEC study areas and non-rural LEC wire centers identified in the service areas shown on Petitioner's Exhibit 7 (Late Filed Revised).

Although NPCR's current coverage does not today extend throughout all of the areas in which it requests designation (*see* Pet. Ex. 3, Ex. SP-2), the FCC has held that an ETC applicant is not required to provide ubiquitous service at the time of its application, but instead must be given time to extend its network based on consumer requests.³ NPCR's witness, Mr. Peabody, testified that with access to universal service support the NPCR would be able to build-out its Indiana network to better serve rural consumers. (Tr. 51.) NPCR's evidence demonstrated an intent and ability to provide service as an ETC, and to respond to reasonable requests for service as required by the FCC, in the areas identified on Petitioner's Exhibit 7 (Late Filed Revised).

E. Commission Factors of Consideration

We begin with our finding, which is that granting NPCR's petition is in the public interest. Numerous factors were taken into account, and we enumerate them here so that we may provide the requisite road map for subsequent applicants, as well as showing the support for our ultimate finding.

a. Public interest analysis under 47 U.S.C. § 214(e)(2) for CETC designation in Specified Rural Service Areas

To guarantee universal service, TA '96 required that all telecommunications carriers contribute into a Universal Service Fund ("USF") on an equitable and nondiscriminatory basis. 47 U.S.C. §254(f). This fund is used to act as a counterbalance for those carriers entering traditionally high cost areas, such as rural or insular areas. "Universal service contributions...support[] the expansion of, and increased access to, the public institutional telecommunications network." *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 427 (5th Cir. 1999)("TOPUC"). The designation of an ETC provides the public with the certainty that there will be a carrier of last resort that provides services determined to be necessary. 47 U.S.C. §214. ETCs are required, at the risk of sanctions, to provide service to designated customers at affordable prices. 47 U.S.C. §214(d); *see also* *In re the Filing by GCC License Corp.*, 623 N.W.2d 474, 477 (S.D. 2001.)

In areas served by rural telephone companies, a competitive ETC can be designated only upon a finding that the designation will serve the public interest. 47 U.S.C. § 214(e)(2). Congress did not define or limit states' public interest tests under Section 214(e)(2), leaving it to

³ *See In the Matter of 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 96-45, FCC 00-248, ¶ 17 (rel. Aug. 10, 2000)* ("[A] telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC").

State commissions are granted the authority to make the designation because of a unique awareness of states' needs and problems. What is examined, however, is dependant upon the duty to the public. "[C]ustomers' interest, not competitors', should control agencies' decisions affecting universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 41 P.3d 1212, 1218 (2002). "Public interest is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. The 'public interest' is broader than the goal of competition alone...[and] broader than the goal of advancing universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 n.3 (2003) (citations omitted.)

In addition, 47 U.S.C. §253(b) allows states to impose requirements on the provision of telecommunications services that are necessary to preserve universal service, protect public safety and welfare, ensure the continued quality of services, and protect the rights of consumers. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15176. This authority, however, is tempered by the requirement that such regulation be competitively neutral. *Id.* While there is the mandate that the State's additional regulations not be inconsistent with the FCC's rules, the statute contemplates additional state regulation that adopts "additional specific, predictable, and sufficient mechanisms" to preserve and advance universal service. 47 U.S.C. §254(f).

Given these explicit statutory mandates, it is clear that Congress intended that state commissions were to play a critical and necessary role in the determination of successor ETCs in rural areas. We intend to honor our obligation, and set out such factors as may guide ETC applicants in the future in making their filings. We turn, then, to the particulars supporting a finding that the designation of NPCR as an ETC is in the public interest.

NPCR's witnesses testified that access to federal universal service funding will allow NPCR to continue to extend its network throughout the state, and this network infrastructure will continue to be available to provide universal and advanced services to rural consumers in Indiana. NPCR's witness Mr. Peabody indicated that it appeared that a "minimal" extension of the network was already anticipated to improve service, and that if ETC status was granted, capital outlay plans could be formulated "in a few days." Tr. at 51. Further, Mr. Peabody testified that even relatively minor investments could improve service area reliability and increase a cell tower's footprint, such as the installation of new coaxial cable on a tower. Tr. at 52. Mr. Peabody recognized that such an extension of service is "the right thing to do" if NPCR is given ETC status, to assist consumers with emergency coverage and provide rural coverage. *Id.* at 52-53.

NPCR currently provides GPS location assistance for customers dialing 911 where requested by a PSAP. As NPCR continues to expand its network in Indiana this network infrastructure will be available to provide basic and enhanced services to its customers. (Pet. Ex. 3, p. 16.) Expansion of the network to provide ubiquitous coverage in Indiana rural areas is in the public interest, as cell phones for farmers become the ideal way to communicate from the "north forty."

focus on the impact to the fund. Tr. at 119. The issue of the size of, and impact to, the universal service fund must be placed in context based on the proposed amount of funds flowing into the state. These are among a number of factors to be viewed by a State commission in making a public interest determination. NPCR does correctly assert that denial of a CETC petition is not the way to change the amount paid by consumers, but a change to the pricing base is. Tr. at 123. NPCR proffered this testimony when defending its designation's potential effect on the USF passed on to customers:

[D]eal[] with the contribution base...by dealing with economic versus embedded versus modified embedded cost recovery, you cannot impact that contribution factor to any significant decimal place by denying individual ETC designation [sic], CETC designation, or all ETC designations collectively...ETCs are currently receiving...less than 6 percent of the high cost funds, which would be less than 30 percent of the total fund. The remainder would be to ILECs. Wireless ETCs are receiving less than half of what's going to all CETCs. There is no way in the decimal places to which all of these calculations are carried out, what we'd call significant digits, to have an impact from CETC designations based on fourth quarter '03 projections.

Testimony of Don Wood, Tr. at 121-22.

This testimony represents the analysis the Commission expects in defense of an ETC petition. Applicants must be able to answer how, and in what terms, its presence as an ETC will affect the market as a whole, and the public interest generally. Mere defensive posturing does nothing to illuminate the Commission on the impact of a designation. Throwing up the Commission's lack of jurisdiction, for example, over the rates and entry of wireless carriers, is reflexive and ultimately non-productive. As NPCR correctly pointed out, current USF support is not based on actual per line need or cost, but on the modified embedded cost per line of the ILEC. Tr. at 124. To the extent that this represents an artificial construct that does not accurately reflect NPCR's costs (or that of any other wireless CETC applicant), it is not a factor over which NPCR has ultimate control, beyond filing comment with the FCC. It should, however, and has done so in this case, present evidence of what impact its designation may have.

NPCR has committed to expansion of coverage in the designated areas, seeking to make its service ubiquitous. In addition, it has examined its network sufficiently to present to the Commission those factors which it needs to improve, and in which areas it will focus. These details, as well as additional factors upon which we will expand more below, show that NPCR is approaching its potential ETC obligations with the requisite thoroughness and solemnity. These factors have convinced us that their petition should be granted.

b. Network infirmities

The premise of universal service contains within it recognition of network infirmities. But for those infirmities, the concept of universal service would be unnecessary. Hence, in an examination of an ETC designation request, an applicant must make specific offerings of proof as to how it will remedy any infirmities it may have identified in its system, or show how it will improve existing service with the USF funds it seeks.

The Minnesota Public Utilities Commission found that the company was able to offer its services through approximately 200 cell sites in and around the state, pledged to build an additional 15 cell sites upon designation as an ETC, pledged to meet customer orders for new service through a variety of measures including additional cell sites, cell extenders, rooftop antennae, high-powered phones, and the resale of existing service, and was willing to address a customer's request for service by developing a schedule for extending service.¹² The Regulatory Commission of Alaska recently granted ETC status to a CMRS provider and stated that the provider need not prove its ability to construct facilities throughout every portion of the incumbent LEC's service area but must demonstrate that its system of providing service throughout the incumbent LEC's service area are *reasonable*.¹³ The Alaska Commission found that a seven-step plan proposed by Alaska Digitel regarding customer service was reasonable.¹⁴ All of these examples support the finding that ETCs can be held to service quality standards and oversight.

Numerous cases have held that requiring an ETC applicant to provide the required services prior to the grant of ETC status would work an anti-competitive outcome, as applicants would be forced to make outlays for services, unsure if such services would ever be requested or supported. However, in those cases where an applicant identifies such weaknesses in its system(s) that might prevent full implementation of a required service under 47 C.F.R. §54.101, we find that there is a requirement that the ETC applicant provide an affirmative statement of how and when the shortcoming is to be remedied. As an example, in the context of a request to extend the deadline for meeting E911 capability, the FCC recently advised Tier III wireless carriers as follows:

[T]he Commission should be able to make the factual determinations necessary to find good cause for granting the waiver if the carrier, as we have previously stated, provides 'concrete, specific plans to address the accuracy standards and ha[s] presented [its] testing data and other evidence to demonstrate its inability to meet the accuracy requirements'....Carriers should avoid blanket statements of technical infeasibility, instead providing technical data on particular portions of their network or pieces of equipment that are problematic.

In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, FCC03-241, ¶26 (Released October 10, 2003).

686, Findings of Fact, Conclusions of Law, and Recommendation at 6, 11 (Minn. Office of Admin. Hearings Dec 31, 2002) (*Minnesota ALJ ETC Recommendation*).

¹² See *Minnesota Midwest Wireless ETC Order* at 6.

¹³ See *Alaska Digitel ETC Order* at 8-9

¹⁴ *Id.* The plan states that if customer is not in an area where the CMRS provider, Alaska Digitel, currently provides service, Alaska Digitel will: (1) Determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) Determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) Determine whether adjustments at the nearest cell site can be made to provide service; (4) Determine whether a cell extender or repeater can be employed to provide service; (5) Determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (6) Explore the possibility of resale; (7) Determine whether an additional cell site can be constructed to provide services, and evaluate the costs and benefits of using high cost support to serve the number of customers.

In response to the question of whether the Commission may impose additional requirements on an ETC in the protection of the public interest, NPCR asserted that it is “concerned about non-applicable rules...[that] would get in the way of providing the service to our customers and the whole objective of expanding the network and providing excellent service to customers.” Tr. at p. 107. However, NPCR properly recognizes the obligation of financial oversight, as reflected in the testimony of Mr. Wood, stating that the Commission must look “very carefully” at how ETCs of all stripes have spent the allocated funds. Tr. at 140-41. He goes on to say:

My experience has been that these support dollars don't represent total expenditures, that when they're available, they make a business case for rural entry that wasn't there before and that private capital follows them. So a hundred thousand in support might yield 3 million in new investment in those areas that now has a business case, that gets it over the hump.

Id.

While NPCR is correct in its assertion that the Commission does not regulate NPCR's rates, the Commission *does* have an affirmative duty to oversee the rates of ETCs, especially regarding Lifeline/Linkup tariffs. Without such oversight, the Commission cannot be assured that a carrier is not using its ETC status to competitive – and public – disadvantage. “An ETC is obliged, at the risk of financial sanctions, to serve designated customers at appropriate prices.” 47 U.S.C. §214(d). State utility commissions are required to “determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof....” 47 U.S.C. §214(e)(3); *GCC License Corp.*, 623 N.W. 2d at 477.

Given this determination, we find that all ETCs are subject to the filing of Lifeline/Linkup tariffs, regardless of technology. This satisfies the requirement of competitive neutrality, as requiring wireline carriers to file such tariffs while exempting wireless carriers would work an inability to properly measure the marketplace of universal service.¹⁷ The Commission cannot reasonably fulfill its statutory mandate to ensure that universal service is available at rates that are “just, reasonable, and affordable” without such filings. 47 U.S.C. §254(i). Further, this is not a requirement that is so “restrictive,”¹⁸ to use NPCR's term, that it prohibits would-be entrants from entering the market. It is, in fact, regulation with a light hand.

Consistent with this duty, we also find that ETC applicants should affirmatively present what accounting protocols will be used to track and account for USF expenditures. The designation of an ETC creates both benefits and burdens on a telecommunications provider. While it gives the right to apply for USF funds, it also creates the concomitant requirement that such support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. §254(e). In addition, the subsidy of competitive services by non-competitive services is prohibited in the provision of universal service. 47 U.S.C. §254(j). The Commission is charged with the obligation of establishing such

¹⁷ *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 22642 n.4 (2002)

¹⁸ Tr. at 139-40

such certification is in the public interest. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd 15168, 15184 n.6 (2000).

In fact, competition is but one element of the bundle that is universal service. TA '96 identified that competition is the only way to open the market and broaden the available choices to consumers. However, it is a means to an end – not the end itself. An examination of competition as it relates to CETCs must focus on whether the competitive force created by the certification of a particular carrier will benefit consumers by furthering the purpose of universal service.

The OUCC and Intervenors introduced evidence that competition for wireless service is not lacking in rural Indiana, with most areas already having access to competitive services from a number of different wireless service providers. Therefore, there was conflicting evidence on the issue of whether designating NPCR as an additional ETC in its proposed ETC service areas would actually increase the level of competition in Indiana. NPCR testified that the intervenors in this case had tried to make this cause “about competition,” shifting the focus from the proper inspection of NPCR’s specific petition for ETC status. Tr. at 113. As Mr. Wood stated, “it should be specific to the company’s application and to the areas in question. It’s not really a question of should we have competition.” Tr. at 137.

NPCR properly recognizes that the public interest inquiry does not focus on what is best for an individual carrier, but what the impact on consumers will be. Tr. at 132. Indiana has telephone service available in all areas, and by NPCR’s own admission there are at least three or more competitive wireless carriers in all rural areas of Indiana.¹⁹ Tr. at 79. Hence, if we certify NPCR, we are not introducing service to previously unserved areas. If that were the test, no ETCs could be designated hence in Indiana. However, “the purpose of the public interest requirement of 47 U.S.C. §214(e) [is] not to protect rural telecommunications companies from competition but to ensure that rural areas receive the same benefits as urban areas.” *In re Application No. C-1889 of GCC License Corp. (Western Wireless)*, 647 N.W.2d at 50.

The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act. Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates

¹⁹ Seventy-five percent of the population has access to five or more wireless carriers, as stated by the FCC. *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 16 FCC Rcd 13350, 13355 (2001). The FCC goes on to note that due to the cap on frequency spectrums, “there are at least four different licensees in every market, and as a practical matter, there are generally five or more licensees in every market.” *Id.* at 13361

context of universal service, supporting a carrier of choice in its attempt to expand and improve its network logically follows. Further, nothing can be closer to the heart of the public interest than improving service for those who serve in law enforcement. We need not belabor the point that of all subscribers, law enforcement needs consistent coverage and service. Hence, supporting the network of NPCR in increasing its signal, expanding its coverage, and improving its network is clearly in the public interest, in that it serves state, local, and federal government – the servants of the people.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. NPCR's application for designation as an Eligible Telecommunications Carrier ("ETC"), as that term is defined in 47 U.S.C. 214(e) and FCC Order 97-157, is hereby GRANTED.
2. NPCR's request for authority to apply for or receive federal universal service funds pursuant to 47 U.S.C. 254 is hereby GRANTED.
3. This Order shall be effective on and after the date of its approval.

McCARTY, HADLEY, LANDIS, RIPLEY AND ZIEGNER CONCUR:
APPROVED:

MAR 17 2004

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Mary M. Becerra
Acting Secretary to the Commission

PETITIONER'S EXHIBIT 7
(LATE FILED)

Designated Areas for which Nextel Partners
seeks ETC designation in this Petition

*Study areas and exchanges with lines through them were included within the Petition
but have been withdrawn by the Company*

1. Rural Telephone Company Study Areas

320742	BLOOMINGDALE HOME
320753	CLAY CTY RURAL COOP
320759	DAVISS-MARTIN/RTC
320776	COMM CORP OF INDIANA
320778	HOME TEL CO INC
320792	MULBERRY COOP TEL CO
320801	CENTURYTEL OF ODON
320807	PERRY-SPENCER RURAL
320809	COMM CORP OF S. IN
320816	S & W TEL CO
320818	SMITHVILLE TEL CO
320819	SE INDIANA RURAL
320828	FRONTIER-THORNTOWN
320830	TRI-COUNTY TEL CO
320834	WASHINGTON CTY RURAL
320837	WEST POINT TEL CO
320839	YEOMAN TEL CO, INC

2. Non-Rural ILEC Wire Centers

Verizon N. – Indiana (SAC 320772)

BRKTINXA
BRZLINXB
GNVLINXA
CORYINXA
CTPNINXA
CYCYINXA
DNKRINXA
FTWYINXB
FTWYINXF
GNCSINXA
GRRTINXA
GSHNINXA
GYVLINXA
LAPTINXG
LBRTINXA
LEWSINXA
LEYTINXA
LEYTINXC
LEYTINXD
LEYTINXF
MRTNINXA
PKGNINXA
PRCKINXA
PRTGINXA
PRTGINXB
RILYINXA
SLLVINXA
TRRHINXA
TRRHINXB
TRRHINXC
TRRHINXD
TRRHINXE
TRRHINXF
VLPRINXA
WBSHINXA
WSFDINXA
WTRLINXA

Verizon N. – Indiana (Contel) (SAC 320779)

AUSTINXA
BRDSINXA
BRTWINXA
BTVLINXA
CENTINXA
COVLINXA
CRLSINXA
CRNDINXA
CYDNINXA
CYNTINXA
DCKRINXA
DUBSINXA
ELBRINXA
ELZBINXA
ENGLINXB
FDNDINXA
FMBGINXA
FRBGINXB
FRBNINXA
FRNCINXA
FTBRINXA
FTTNINXA
GRTWINXA
HEVLINXA
HGBGINXA
HNVRINXA
HYVLINXA
HZTNINXA
JSPRINXA
LACNINXA
LNVLINXA
LOGTINXA
LVWOINXA
LXTNINXA
LYVLINXA
MCKYINXA
MDSNINXA
MERMNINXA
MLTWINXA
MNCYINXA
MRNGINXA
NWMLINXA
OKCYINXA
OKTWINXB

OWVLINXA
PAOLINXA
PLMYINXA
PRTNINXA
PTBGINXB
RDTNINXA
RMSYINXA
SALMINXA
SCBGINXA
SHLBINXA
SHLSINXA
SPRGINXA
STATINXA
SYMRINXA
WTLDINXA

1555156v2

FILED

MAR 25 2004

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE DESIGNATION)
OF ELIGIBLE TELECOMMUNICATIONS)
CARRIERS BY THE INDIANA UTILITY)
REGULATORY COMMISSION PURSUANT)
TO THE TELECOMMUNICATIONS ACT OF)
1996 AND RELATED FCC ORDERS, AND IN)
PARTICULAR, THE APPLICATION OF)
NPCR, INC. d/b/a NEXTEL PARTNERS)
TO BE DESIGNATED.)

CAUSE NO. 41052 ETC 43

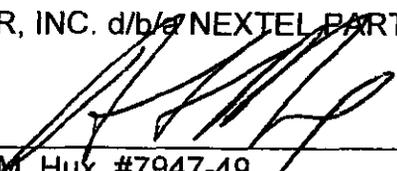
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APR 2 2004
FCC - MAILROOM

FILING OF HIGH COST UNIVERSAL SERVICE FUNDING CERTIFICATION

Comes now, NPCR, Inc. d/b/a Nextel Partners, by counsel, Alan M. Hux, and files its High Cost Universal Service Funding Certification for All Eligible Rural Telecommunications Carriers.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS



Alan M. Hux, #7947-49
KORTEPETER MCPHERSON HUX
FREIHOFER & MINTON
320 N. Meridian Street, Suite 500
Indianapolis, Indiana 46204
Telephone: (317) 639-4611
Facsimile: (317) 637-7106

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

RECEIVED & INSPECTED
APR 2 2004
FCC - MAILROOM

IN THE MATTER OF THE DESIGNATION)
OF ELIGIBLE TELECOMMUNICATIONS)
CARRIERS BY THE INDIANA UTILITY)
REGULATORY COMMISSION PURSUANT)
TO THE TELECOMMUNICATIONS ACT OF)
1996 AND RELATED FCC ORDERS, AND IN)
PARTICULAR, THE APPLICATION OF)
NPCR, INC. d/b/a NEXTEL PARTNERS)
TO BE DESIGNATED.)

CAUSE NO. 41052 ETC 43

RECEIVED

MAR 29 2004

INDIANA UTILITY
REGULATORY COMMISSION

AFFIDAVIT

As an authorized corporate officer of NPCR, Inc. d/b/a Nextel Partners, I

Barry Rowan

, under penalty of perjury, hereby affirm familiarity with and understanding of the requirements of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 with respect to the receipt of Universal Service Funds and affirm that funds received for high cost loop support (47 C.F.R., Part 36), local switching support (47 C.F.R. §54.301), and any high cost support received as a result of a purchase of exchanges (47 C.F.R. §54.305) will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended pursuant to 47 U.S.C 254(e).

[Signature]

(Signature)

Chief Financial Officer

(Title)

3/25/04

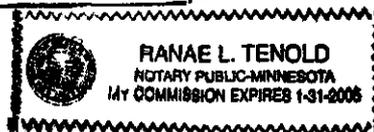
(Date)

Subscribed and sworn before me this 25th day of March, A.D. 2004.

NOTARY PUBLIC

Ranae L. Tenold

My Commission Expires January 31, 2005



**High Cost Universal Service Funding Certification
For All Eligible Rural Telecommunications Carriers
IURC Cause No. 42067**

Each rural carrier is required to complete this form in order to receive certification by the Indiana Utility Regulatory Commission that the carrier is eligible to receive federal high-cost loop support. If a particular question does not apply, simply mark it "N/A." If you need to attach additional sheets, please do so. If you have any questions, please call the Telecommunications Division at 317-232-2785.

Carrier Name: NPCR, Inc. d/b/a Nextel Partners

Study Area Code 329008

IURC Cause No.: 42067-HLS-43

Carrier Address: 4500 Carillon Point
Kirkland, WA 98033

Contact Name: Boyd Daniels

Contact Email: boyd.daniels@nextelpartners.com

Position: Tax Manager

Phone: (425) 576-3684 **FAX:** (425) 238-7494

1. With regard to your Study Area¹ please provide the following information, using the most current year-end financial statements (preferably audited):

Federal Loop Support:	\$ <u>0</u>
Federal Switching Support:	\$ <u>0</u>
Federal Interstate Common Line Support:	\$ <u>0</u>
Total Federal Support ² :	\$ <u>0</u>
Total SLC Revenues:	\$ <u>0</u>
Total Common Line Costs	\$ <u>0</u>

2. Do you expect the amount of Federal Universal Service funding you will receive in the coming year to change by a significant amount from prior years? If yes, please estimate how much more or less you will be receiving, and explain the reason for the change (if you know).

Yes, 2004 is the first year of ETC designation in the state of Indiana. USAC projections for support in the second quarter of 2004 are \$11,966 per month, consisting of HCL, SNA, IAS, LTS, LSS and ICLS.

3. Explain how your company plans to use federal universal service funds it will receive in the coming calendar year. Indicate below how those funds will be applied to provision, maintain, and upgrade eligible facilities and services.

Provision:	\$ <u>413,000</u>	network expansion in designated areas
Maintenance:	\$ <u>0</u>	
Upgrade:	\$ <u>0</u>	
Total:	\$ <u>413,000</u>	

¹ Study area refers to the geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms according to § 214(e)(5).

² To calculate Total Federal Support, add the values from loop, switching and ICLS support

Please describe any upgrade projects that are being funded with federal universal service funds:

New Sites:		
Scottsburg	\$133,300	Expand Coverage
Incremental switch capital for Scottsburg	\$ 7,465	
Riley	\$146,612	Expand Coverage
Incremental switch capital for Riley	\$ 467	
Site Modifications:		
Greencastle	\$ 18,265	TTA – Expand Coverage
Paxton	\$ 41,099	Antenna Change – Expand Coverage
Allendale	\$ 66,026	Sectorize site – expand coverage
	<u>\$413,234</u>	

4. Describe the level of access to advanced services presently available to your customers³. Information can include but is not limited to digitized central offices, packet switching, DSLAM equipment, and high-speed asymmetric DSL lines.

Nextel services do not provide data rates fast enough to be characterized as advanced services.

5. What future infrastructure investments, if any, are planned to enhance customer access to advanced services?

N/A

³ *In the Matter of Federal-State Board on Universal Service and the MAG Plan, Fourteenth Report and Order*, CC Docket Nos. 96-45 and 00-256 at Paragraphs 200-201. The FCC Order appears to encourage the use of federal high-cost loop support for the deployment of equipment capable of providing access to advanced services.

6. Please identify any competitive eligible telecommunications communications carriers operating in your study area, and if you are receiving access revenue from them, how much.

\$0

7. Do you have any Special Access surcharge revenues? If so, please identify the annual amount of revenue received for the reporting period.

NPCR, Inc. d/b/a Nextel Partners, Inc. does not have access revenues.

ORIGINAL
STATE OF INDIANA

DWH
RECEIVED & INSPECTED
APR 2 2004
FCC - MAILROOM

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE COMMISSION'S)
CERTIFICATION OF RURAL CARRIERS')
ELIGIBILITY TO RECEIVE FEDERAL HIGH-COST)
UNIVERSAL SUPPORT, PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996, THE)
FCC'S MAY 23, 2001 ORDER, AND OTHER)
RELATED FCC ORDERS.)**

CAUSE NO. 42067 HLS-43

APPROVED: MAR 31 2004

**BY THE COMMISSION:
Gregory S. Colton, Administrative Law Judge**

On May 23, 2001, the Federal Communications Commission issued an Order¹ ("the FCC's RTF Order") assigning to state commissions the responsibility of certifying whether rural carriers are using federal high-cost support in a manner consistent with the requirements of Section 254(e) of the Telecommunications Act of 1996. Pursuant to Section 254(e), carriers must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

In order to carry out the FCC's directive, this Commission issued a consolidated order in this Cause and Cause No. 40785 prescribing forms to be filled out and procedures to be followed by those rural carriers seeking certification. Upon reviewing the applications submitted by rural carriers seeking certification, the Commission issued orders in this Cause on September 26, 2001 and September 11, 2002 certifying the eligibility of Indiana rural carriers to receive federal high-cost support. In a June 18, 2003 docket entry issued in this Cause and Cause No. 40785, the Commission amended the form to be filled out by carriers seeking certification.

On March 17, 2004, the Indiana Utility Regulatory Commission issued an Order in Cause No. 41052-ETC 43 approving the request by NPCR, Inc. d/b/a Nextel Partners to be designated an Eligible Telecommunications Carrier. Nextel Partners, a wireless carrier, was authorized to serve as an ETC in selected study areas of Indiana rural telephone companies.

On March 24, 2004, Nextel Partners filed with the Commission a completed application and affidavit that are required by the IURC before the IURC will certify a carrier as being eligible to receive federal high-cost loop support.

Upon reviewing the completed application, the Commission finds that Nextel Partners has demonstrated the requisite compliance with the requirements of Section 254(e) of the Telecommunications Act of 1996, as interpreted by the FCC's RTF Order and this Commission's August 22, 2001 Order. More specifically, based on the completed applications, we find that

¹ In the Matter of Federal-State Board on Universal Service and the MAG Plan, Fourteenth Report and Order, CC Docket Nos 96-45 and 00-256.

Nextel Partners will be using federal high-cost support (which includes high-cost loop support, local switching support, high-cost support received pursuant to the purchase of exchanges, high-cost model support, and hold harmless support) only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254 (e) of the Communications Act.

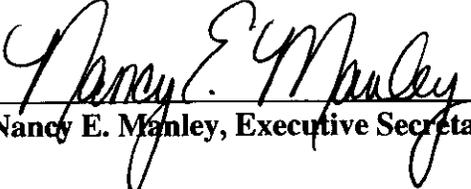
In accordance with the FCC's RTF Order, we direct the Commission's Secretary to inform the Universal Services Administrative Company ("USAC") and the FCC that this Commission has certified that NPCR, Inc. d/b/a Nextel Partners has met the requirements of Section 254(e) and the FCC's RTF Order.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. NPCR, Inc. d/b/a Nextel Partners shall be, and hereby is, certified by this Commission as having satisfied the requirements of Section 254(e) and the FCC's RTF Order.
2. The Commission's Secretary shall inform the FCC and USAC by April 1, 2004 that Nextel Partners has been so certified.
3. This Order shall be effective on and after the date of its approval.

MCCARTY, HADLEY AND RIPLEY CONCUR; LANDIS AND ZIEGNER ABSENT:
APPROVED: MAR 3 1 2004

I hereby certify that the above is a true and correct copy of the Order as approved.



Nancy E. Manley, Executive Secretary