

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket 96-45
)	
NPCR, INC. d/b/a NEXTEL PARTNERS)	DA 04-998
)	
Supplement to Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Georgia)	
)	
and)	
)	
NPCR, INC. d/b/a NEXTEL PARTNERS)	
)	
Supplement to Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Tennessee)	
_____)	

**NEXTEL PARTNERS' REPLY TO COMMENTS
OF FRONTIER COMMUNICATIONS OF GEORGIA, INC., ET AL.**

NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel, hereby submits its “Reply” to the Comments filed on May 7, 2004 by Frontier Communications of Georgia, Inc., Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications of Tennessee and Citizens Telecommunications Company of the Volunteer State d/b/a Frontier Communications of the Volunteer State (hereinafter jointly referred to as “Frontier”) in the above-captioned proceeding. This proceeding concern Nextel Partners’ Petitions for Designation as an Eligible Telecommunications Carrier (“Petitions”) in the states of Georgia¹ and Tennessee² as

¹Nextel Partners’ Petition for the Designation as an Eligible Telecommunications Carrier in the State of Georgia (hereinafter, the “Georgia Petition”) was filed on July 10, 2003 in Commission Docket No. 96-45.

²Nextel Partners’ Petition for the Designation as an Eligible Telecommunications Carrier in the State of Tennessee (hereinafter, the “Tennessee Petition”) was filed on June 12, 2003 in Commission Docket No. 96-45.

recently supplemented in compliance with the requirements of the Commission's *Virginia Cellular Order*.³

I. BACKGROUND

Nextel Partners' Supplements to its Georgia and Tennessee Petitions were filed on March 24, 2004, and the Commission requested comment by Public Notice issued on April 12, 2004.⁴ In its May 7, 2004 Comments, Frontier states that it is commenting generally with respect to Nextel Partners' supplemented Petitions for the states of Georgia and Tennessee and that these Comments also apply "in the other states where affiliates of the Frontier Companies operate."⁵ Since Frontier did not specify which other states are implicated, however, Nextel Partners herein replies to Frontier's Comments for purposes of Georgia and Tennessee. Frontier's Comments also apply to the February 17, 2004 supplemental filing of Advantage Cellular Systems, Inc. ("Advantage Cellular") in Tennessee.⁶

Frontier refers to Nextel Partners and Advantage Cellular jointly as the "Petitioners," and in most cases does not distinguish in its discussion between Nextel Partners' Supplemental filings for Tennessee and Georgia. For this reason, it is often difficult to know which filing or Petitioner Frontier is referring to in its Comments at any given time. Accordingly, Frontier's Comments fall considerably short of an analysis on

³ *In the Matter of Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular Order*").

⁴ FCC Public Notice, "Parties Are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations," CC Docket No. 96-45, DA 04-998, (released April 12, 2004).

⁵ See Frontier Comments at 3 n.5.

⁶ *Id.* at 3.

the substantive merits of any particular petition.

II. DISCUSSION

A. Designation of Nextel Partners as an ETC in Georgia and Tennessee Will Provide Important Benefits to the Citizens of Those States

The Universal Service Program is not only intended to bring local phone service to consumers in rural, high cost and insular areas, but it is also intended to ensure that these consumers have

access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁷

Under the Commission's Universal Service policies, consumers residing in high cost areas and low income consumers in the Georgia and Tennessee should be afforded the same opportunities as other citizens to choose a telecommunications carrier, to access new technologies, realize the benefits of mobility and access to wireless emergency services and to select from a menu of innovative services.⁸ The record in this proceeding clearly demonstrates that Nextel Partners' designation as an ETC will bring these telecommunications benefits to Georgia and Tennessee telecommunications users in rural, high cost and insular areas.

⁷ 47 U.S.C. § 254(b)(3).

⁸ See *Virginia Cellular Order* at ¶¶ 12 and 29 and Separate Statement of Chairman Michael K. Powell at ¶ 1 ("we recognize the unique value that mobile services provide to rural consumers by giving added substance to the public interest standard by which we evaluate wireless eligible telecommunications carriers.") See also *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 at ¶¶ 4, 21 (1997) ("Universal Service Order"). See also *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214 (e) and PUC SUBST. R. 26.418*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168 (Texas Public Utility Commission, October 30, 2000) ("*Texas PUC Order*") at 2.

Nextel Partners' predominant business focus is to bring competitive state-of-the-art digital mobile telecommunications services to citizens living in secondary and rural markets. And in doing so, Nextel Partners provides these citizens access to the same nationwide Nextel system that is operated by Nextel Communications, Inc. in the primary U.S. Markets.

In particular, Nextel Partners adds the element of *mobility* to the provision of Universal Service Fund ("USF") supported services -- a valuable option that the incumbent wireline LECs cannot match. This essential difference is particularly beneficial to consumers in rural areas, including remote roads and highways, where wireline telephones are more widely spaced than in concentrated urban areas. As the Commission emphasizes in its recent *Virginia Cellular Order*:

. . . the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.⁹

Nextel Partners also provides a larger local calling area than the ILECs, the acknowledged benefits of mobile telephony service and, where requested by the PSAP, GPS location assistance for customers calling 911.¹⁰ These benefits will be expanded and made available to more rural customers in Georgia and Tennessee as a result of Nextel Partners' ETC designation.

⁹ *Virginia Cellular* at ¶ 29.

¹⁰ Nextel Partners' Georgia Petition at 7; March 24 Supplement at 7, § 7 ("Public Interest") and Exhibit 3 ("Local Calling Area Maps for Georgia").

B. Applicable law does not require a petitioner to commit that it will provide universal service throughout its designated area within a specified time frame in order to be designated an ETC

Frontier contends that an examination of Nextel Partners' March 24, 2004 Supplement for its Petition¹¹ "leaves it unclear" whether Nextel Partners has satisfied the criteria set forth in the *Virginia Cellular Order*.¹² In particular, Frontier argues that Nextel Partners should be "subject to specific time frames and service quality standards associated with providing service throughout the entire area in which they receive ETC designation."¹³ Frontier complains that Nextel Partners has not made any specific commitment to serve the entire designated area, or to provide USF supported services to requesting customers within any specific time frame.¹⁴ Frontier insists that Nextel Partners should not be granted ETC status unless it commits in advance that it will provide USF supported services throughout its entire designated service territory within a specific time frame.¹⁵

Frontier's comment lacks merit because applicable law does not require a petitioner for ETC status to commit in advance to a specific time frame for providing USF supported services throughout its designated service territory. As clearly set forth in the Commission's *Virginia Cellular Order*, applicable law requires instead that a petitioner "satisfy its obligation to serve the designated service areas within a *reasonable*

¹¹ It is not clear from Frontier's Comments whether Frontier is referring to the March 24, 2004 Supplement to Nextel Partners' Tennessee Petition, or the Supplement of even date filed with respect to Nextel Partners' Georgia Petition..

¹² Frontier Comments at 5.

¹³ *Id.*

¹⁴ *Id. at 6.*

¹⁵ *Id. at 8.*

time frame.”¹⁶ The evaluation of the “reasonableness” of the petitioner’s progress in building out its designated service territory, as is the case with other public interest issues evaluated by the Commission, is a “fact-specific exercise” that is dependent on the particular situation faced by the petitioner in a particular ILEC study area.

For example, in Nextel Partners’ March 24, 2004 Supplement to its Petition in the State of Tennessee, Nextel Partners makes the specific commitment to “respond to reasonable requests for service within its designated service territory.”¹⁷ Consistent with this commitment, Nextel Partners proposed a series of steps to address various service scenarios that could occur as Nextel Partners builds out its existing system to provide enhanced coverage to its designated service area. As an initial matter, Nextel Partners states that requests for service from a potential customer within existing network coverage will be filled immediately. If such a customer makes an Internet or phone order for a handset and service plan by 4:00 pm, a phone will be sent in overnight mail for delivery the following morning.¹⁸ Customers requesting service that are located outside Nextel Partners existing network will be subject to a detailed six-step process, pursuant to which Nextel Partners will endeavor to find the best way to provide service.¹⁹

Nextel Partners also commits in its March 24, 2004 Supplements to specific Construction Plans for its designated service territories in Georgia and Tennessee “to improve its network facilities, and reach out to areas that it does not currently serve.”²⁰

¹⁶ See *Virginia Cellular Order* at ¶ 28 (emphasis supplied).

¹⁷ See Nextel Partners’ March 24, 2004 Supplement to its Tennessee Petition at 3, § 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.* at 5.

Nextel Partners' extensive track record for building out its system and serving customers in these states to date underscores the commitments Nextel Partners makes in these 2004 construction plans. Nextel Partners also agreed to provide the Commission and the Universal Service Administrative Company annual reports that can be used to evaluate Nextel Partners' "progress towards meeting its obligation to provide service throughout its service area."²¹

Nextel Partners' specific commitments in its Georgia and Tennessee Petitions and March 24, 2004 Supplements thereto are in compliance with the requirements of the Commission's *Virginia Cellular Order*, and Frontier has not identified any pertinent respect in which they are lacking. To the extent that Frontier seeks to apply a more rigid standard than existing law, Frontier's proposal exceeds the scope of this proceeding, and may be entertained in the context of a Commission rulemaking proceeding.²²

C. Applicable law does not require a petitioner to commit that it will provide universal service to every requesting customer without fail in order to be designated an ETC

Frontier criticizes the six-step process that Nextel Partners has set forth in its March 24, 2004 Supplements, pursuant to which Nextel Partners will seek to provide service to any requesting customer that is within Nextel Partners' designated service territories but outside the existing coverage of Nextel Partners' system at the time he or she requests service. Frontier observes that, if after following the prescribed sequence of

²¹ *Id.* at 6, citing *Virginia Cellular Order* at 30.

²² See, e.g., *In the Matter of Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532 at ¶¶ 22 and 26 (2002) ("*RCC Order*") at ¶ 32 ("We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these *concerns* are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC.")

steps, Nextel Partners still cannot provide service, it will only be required to notify the customer and file the information in an annual report to the Commission.²³ Frontier argues that this is insufficient.

Frontier's assertion that Nextel Partners must serve every customer in its designated service area without fail is erroneous. Applicable law requires that a competitive ETC r furnish "communications services upon reasonable request"²⁴ within the areas for which it seeks designation as an ETC. The law does *not* require that a competitive ETC expend unlimited resources to serve every single customer, regardless of whether doing so would require an *unreasonable* amount of time, effort and expense. Nextel Partners' enumerated steps for provisioning service to customers both within and without existing network coverage satisfies the requirements of the Commission's *Virginia Cellular Order*; and Frontier has not even attempted to argue to the contrary. As above, to the extent that Frontier desires a change in the existing law, this mission exceeds the scope of the instant proceeding, and Frontier should seek its remedy elsewhere.

III. CONCLUSION

Because all applicable legal and public interest requirements have been met, Nextel Partners requests that the Commission promptly grant Nextel Partners' Petitions for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Tennessee.

²³ *Id.*

²⁴ 47 U.S.C. § 201(a).

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS

By _____ [signed]

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