Before the
Federal Communications Commission

In the Matter of	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service)	)	
	)	
NPCR, INC. d/b/a NEXTEL PARTNERS	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier	)	
in the Commonwealth of Pennsylvania	)	

Pennsylvania Public Utility Commission's Comments to
Sprint's Supplemental Filing

In this pending matter before the FCC, Sprint Corporation (Sprint) petitioned for eligible telecommunications carrier (ETC) status in certain non-rural territories of the Commonwealth of Pennsylvania. On May 14, 2004, Sprint completed a supplemental filing intending to satisfy the FCC's guidelines for ETC designation for wireless carriers set forth in recent FCC rulings in *Virginia Cellular*[1] and *Highland Cellular*[2].

The Pennsylvania Public Utility Commission (PaPUC) filed initial comments in response to Sprint's original petition. In its petition, Sprint relied upon the letter issued by the Secretary of the PaPUC to NPCR, Inc., d/b/a Nextel Partners, Inc., (Nextel), to satisfy the FCC's requirement that the state be afforded the opportunity to decide the question of state jurisdiction to designate wireless carriers as ETCs before the FCC would

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[1] *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. January 22, 2004)(*Virginia Cellular Order*).

rule in the matter. The PaPUC's initial comments specifically noted that the Nextel letter presented by Sprint should *not* be read as an affirmative statement of the PaPUC's position on jurisdiction to designate wireless carriers as ETCs or to constitute PaPUC's waiver of the question on jurisdiction. The comments also generally outlined the PaPUC's perceived areas of concern regarding ETC designation of wireless carriers in rural areas.

The PaPUC's initial comments to Sprint's ETC petition included an attached copy of a then-recently issued Secretarial Letter, which expressly stated to all telecommunications carriers that the Nextel letter could not be relied upon as a statement of the PaPUC on the question of jurisdiction to designate wireless carriers as ETCs.

Despite the statement of the PaPUC to the contrary, Sprint's supplemental filing persists in representing that the Nextel letter satisfies the FCC's requirement the state be given the opportunity to decide the jurisdictional question in the first instance. (*See*, Sprint Supplemental filing at p. 2) Sprint's footnoted reference to the Initial Comments of the PaPUC demonstrates willful ignorance of the PaPUC's stated position on the question of state jurisdiction to designate wireless carriers as ETCs.

Sprint has made no attempt to obtain an affirmative statement of the PaPUC, either by petition for ETC designation before the state commission or by request for declaratory order.

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[2] *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004)(*Highlan*d *Cellular Order*).

The PaPUC recently filed comments to the supplemental filing of Nextel. Our comments were offered primarily to note that the recent FCC decisions *Virginia Cellular* and *Highland Cellular* highlight the FCC's intent for requiring an "express statement from a state commission that it does not regulate wireless carriers for purposes of ETC designation" as a means to ensure that the state commission has had a full opportunity to review the question, as a prerequisite to FCC consideration of the request for ETC designation filed by a wireless carrier. (*See*, Comments of PaPUC to Nextel supplemental filing at p. 2, filed May 7, 2004, at CC Docket No. 96-45) As we did in the Nextel case, we now write to urge that the FCC not construe the Nextel letter to satisfy the requisite affirmative statement of the PaPUC, and to ask that Sprint's petition be denied. At a minimum, the Sprint petition, as we urged in Nextel, should be held in abeyance, pending state resolution of the issue, here in Pennsylvania.

If Nextel's letter from the PaPUC is construed by the FCC to satisfy the "express statement of no jurisdiction" by the state commission, the FCC will effectively deprive the PaPUC of the opportunity to consider jurisdiction in the first instance. This is particularly true where, as here, the letter is offered by a party other than Nextel. As Nextel noted in its reply to the PaPUC's comments on the supplemental filing, the FCC has stated that an affirmative statement of state commission is required in each case. (*See*, Reply Comments of Nextel to the Comments of the PaPUC, filed May 14, 2004, at Docket No. 96-45, p. 9[3]) If this requirement is to hold any significance, it must be read to

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[3] *Citing,In the Matter of the Federal-State Joint Board on Universal Service, Petition for Western Wireless Corporation's Designation as an Eligible Telecommunications*

require the wireless carrier seek an individual statement, unless and until the state commission rules as a general matter on the subject.

As we noted in our comments to Nextel's supplemental petition, the question of the PaPUC's jurisdiction to designate wireless carriers is currently at issue in two proceedings pending before the PaPUC[4]. It is highly relevant to the FCC's consideration of the Sprint's petition that the PaPUC is poised to rule on the question in the near future.

The limited purpose of these comments is to stress that the Nextel letter may not be read as a general statement of the PaPUC on the question of state jurisdiction to designate wireless carriers as ETCs. We also write to remind the FCC of Pennsylvania's pending consideration of the jurisdictional question. By these comments we neither address the sufficiency of Sprint's supplemental filing in view of the public interest standards enunciated in *Virginia Cellular* and *Highland Cellular* nor comment on Sprint's assertion that the "public interest" standards applicable to a wireless carrier's request for ETC designation in a rural area are not equally applicable to the request for designation in non-rural areas.

Carrier in the State of Wyoming, 16 FCC Rcd 19144 (2001) at ¶ 16.

[4]*Comments of the PaPUC to Nextel's Supplemental filing , filed May 7, 2004, at CC Docket, 96-45)* citing, *Petition of Cellco Partnership d/b/a Verizon Wireless to Terminate Section 251(f)(1)(B) Rural Exemptions of Bentleyville Communication Corporation, et al.,* Docket Nos. P-00021995 through P-00022015. (Verizon Wireless seeking termination of rural exemption for 21 rural ILECs), and, *In Re: Petition for Declaratory Order of AT&T Wireless Services*, *Inc*., Docket No. P-00042087. (AT&T Wireless request for PaPUC declaratory order that it does not regulate wireless carriers for purposes of ETC designation).

Rather, we write to urge the FCC to find that the Sprint's reliance on the Nextel letter fails to satisfy the prerequisite element of an "express statement of the state's lack of jurisdiction," *ie*., the state's voluntary action to defer to federal jurisdiction. The PaPUC has not deferred the question to the federal level and is actively reviewing the question in a substantive manner.

Moreover, Sprint's failure to seek an individual statement from the PaPUC on the jurisdictional question, together with Sprint's reliance upon the Nextel letter as an affirmative statement by the PaPUC, demonstrates the reality of the PaPUC's concern that the Nextel letter may be afforded preclusive effect. If the Nextel letter is construed to satisfy as an "affirmative statement" of the PaPUC, despite our express statement to the contrary, any wireless carrier may obtain exclusive federal jurisdiction of the question in subsequent cases simply by refraining from seeking an affirmative statement from the PaPUC and purporting to rely upon the Nextel letter.

In order to remain consistent with *Virginia Cellular* and *Highland Cellular*, the FCC should conclude that, as a general matter, any state commission's active consideration of the question of state jurisdiction precludes federal jurisdiction of a wireless carrier's petition for ETC designation. Specifically, the FCC should find that Sprint and all wireless carriers are required to seek an individual affirmative statement from the state commission prior to petitioning the FCC for ETC designation, unless and until the state commission rules generally on the question of jurisdiction.

In the alternative, the FCC should find that the PaPUC's active consideration of the general question of state jurisdiction of ETC designation of wireless carriers precludes FCC disposition on the Sprint petition, at a minimum, until conclusion of the Pennsylvania proceedings.