Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition for Revocation of Sprint/Nextel's Designation as an Eligible Telecommunications Carrier in the State of Virginia	)	
	)	
To: Wireline Competition Bureau	)	

RURAL ILECS PETITION FOR REVOCATION OF SPRINT/NEXTEL'S ETC DESIGNATION IN VIRGINIA OR, ALTERNATIVELY, MOTION TO SHOW CAUSE

TDS TELECOMMUNICATIONS CORP.

Gerard J. Waldron
John Blevins
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-6000

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INTRODUCTION & SUMMARY

In 2003, Sprint Nextel Corporation ("Sprint/Nextel") petitioned the Commission for designation as an eligible telecommunications carrier ("ETC") in Virginia under 47 U.S.C. § 214(e)(6).[1] To comply with federal requirements, and in response to concerns about designating a national carrier as an ETC, Sprint/Nextel repeatedly represented to the Commission that it would use federal funding to aggressively build out and expand coverage in rural and unserved markets. On the basis of these representations, Sprint/Nextel obtained ETC designation in 2004. *See 2004 Nextel ETC Order*, ¶19 ("Nextel has committed to improve its network and reach out to areas that it does not currently serve.").[2] The undersigned companies ("Rural ILECs")[3] submit

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[1] *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (April 23, 2003) ("*Sprint/Nextel ETC Petition*").

[2] Order, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket 96-45, 19 FCC Rcd. 16530 (2004) ("*2004 Nextel ETC Order*").

this Petition to revoke Sprint/Nextel's ETC status in Virginia because Sprint/Nextel has not built out and expanded coverage in rural and unserved areas.[4]

Contrary to its promises and representations, Sprint/Nextel has expanded coverage in only a fraction of the Virginia study areas in which it is currently designated, despite having had three years in which to build out its network. As a result, several of Sprint/Nextel's designated study areas (particularly its rural study areas) remain wholly outside its coverage area. Instead, and as commenters warned in 2004, Sprint/Nextel has targeted its coverage in Virginia to densely-populated areas and interstate highways, while conveniently ignoring many of the study areas that Sprint/Nextel represented it would serve when it designated the company as an ETC, and upon which representations the Commission premised its designation.

The failures to expand coverage to these rural areas not only contradict these representations and premises, they are also inconsistent with the regulations and requirements adopted in the Commission's *2005 ETC Designation Order* and the *2004 Nextel ETC Order*.[5]

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[3] Rural ILECs — which include TDS Telecommunications Corp. ("TDS"), FairPoint Communications, Inc. ("FairPoint"), and Burke's Garden Telephone Company ("Burke's Garden") — hold companies that rely on universal service funds to provide telecommunications services to rural and unserved communities in Virginia. Rural ILECs have consistently opposed Sprint/Nextel's designation as an ETC on the basis that Sprint/Nextel would receive support without advancing the goals of universal service.

[4] Rural ILECs submit this Petition pursuant to 47 C.F.R. § 1.1, which provides that "[t]he Commission may . . . on petition of any interested party, hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law." *See also* Order, *Federal-State Joint Board on Universal Service, Petition for Designation for the Navajo Reservation in Utah*, CC Docket No. 96-45, 22 FCC Rcd. 2479, at ¶33 (2007) ("[I]f [an ETC] fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission may exercise its authority to revoke . . . ETC designation").

[5] *See generally* Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 20 FCC Rcd. 6371 (2005) ("*ETC Designation Order*").

The Commission should note that this Petition is distinct from the ETC proceedings pending before the Commission. In those proceedings, the Commission is being asked to evaluate ETC designation on the basis of carriers' *prospective* commitments to comply with federal requirements. This Petition, by contrast, requests the Commission fulfill its statutory responsibility to assess *retrospectively* — on the basis of a well-developed factual record premised not merely on the claims of observers, but on the behavior of Sprint/Nextel itself — whether Sprint/Nextel has in fact met its commitments and currently merits ETC status.

Because the evidence available to petitioners makes at minimum a *prima facie* case clear that Sprint/Nextel is not in compliance with its ETC status, the Commission can and should take appropriate action by revoking its ETC designation. This is precisely the action set out by the Commission in the *ETC Designation Order*: "If [an] ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support . . . or revoke the carrier's designation[.]" *Id.* ¶72. *See also 2004 Nextel ETC Order*, ¶25 ("[I]f Nextel fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.").[6] The Commission should exercise that authority here.

I. NEXTEL'S ETC DESIGNATION WAS PREMISED ON REPRESENTATIONS IT HAS NOT HONORED.

A. Procedural History

The procedural history of Sprint/Nextel's ETC petition provides the necessary context for understanding the company's initial commitments to expand coverage in Virginia's rural areas.

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[6] In the alternative, the Rural ILECs request that the Commission require Sprint/Nextel to show cause why its ETC designation in Virginia should not be revoked. *See infra* Part II.C.

Sprint/Nextel originally sought ETC designation in Virginia on April 23, 2003.[7] After Sprint/Nextel filed its petition, the Commission released its *Virginia Cellular* Order, which imposed stricter conditions and requirements upon ETC designation applications.[8] Among other things, *Virginia Cellular* required ETC applicants (and ETCs) to submit annual reports detailing progress on achieving network build-out and to satisfy a stricter public interest standard that included a "cream-skimming" analysis. *ETC Designation Order*, ¶14. The Commission formally adopted these requirements in its 2005 *ETC Designation Order* and applied them to all ETCs designated under Section 214(e)(6). *Id*. ¶¶1-6.

In response to *Virginia Cellular*, Sprint/Nextel submitted on March 24, 2004, a supplemental ETC designation petition that included, *inter alia*, its proposed construction plans for Virginia and its commitment to show "progress in meeting its build-out plans in the service areas it is designated as an ETC." *Sprint/Nextel Supplement*, at 6.[9] On August 25, 2004, the Commission granted Nextel's ETC Petition. *See 2004 Nextel ETC Order*.

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[7] *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (April 23, 2003) ("*Sprint/Nextel ETC Petition*").

[8] Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

[9] *See Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (March 24, 2004) ("*Sprint/Nextel Supplement*"). Sprint/Nextel submitted an updated construction plan for Virginia on June 30, 2004. Ex Parte Notice from Albert J. Catalano, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45 (June 30, 2004) ("*June 2004 Ex Parte Letter*").

B. Nextel's ETC Designation Was Premised on Representations That It Would Expand Coverage and Comply with ETC Regulations.

Several parties, including some of petitioners, opposed Sprint/Nextel's ETC petition, arguing that the national carrier had not evidenced a true commitment to providing service in high-cost areas in Virginia, particularly in rural areas.[10] More generally, commenters argued that designating a large national carrier would put enormous strains on the Universal Service Fund ("Fund" or "USF") and was inconsistent with the purposes of the universal service program, which seeks to promote universal coverage and is not intended to subsidize competition in the densely-populated areas where national carriers generally operate.[11]

In response to the commenters' objections (and in response to *Virginia Cellular*'s stricter requirements), Sprint/Nextel consistently and repeatedly committed to the Commission that it would expand coverage into rural and unserved areas:

- *April 23, 2003*: "Allowing Nextel Partners access to universal service subsidies will allow [it] to continue to enhance and expand its network infrastructure to better serve consumers in underserved, high-cost areas of the State of Virginia." *Sprint/Nextel ETC Petition*, at 8.
- *July 23, 2003*: "Nextel Partners' primary business focus is the provision of services in mid-sized and tertiary markets. This business focus makes Nextel

[10] *See, e.g.*, Comments of TDS Telecommunications Corp., *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45 (filed May 7, 2004); Comments of the NTELOS Telephone Companies, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45 (filed May 7, 2004); Reply Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45 (filed July 21, 2003).

[11] As demonstrated by the explosive growth in USF support for CETCs over the past few years, the commenters' warnings have proven prescient. *See* Comments of National Telecommunications Cooperative Association, Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, at 3 (Dec. 4, 2006) (*NTCA Comments*) (explaining that CETC support has grown from $106 million in 2003 to $1.03 billion in 2006).

Partners a natural and high-priority candidate for ETC designation. . . . [Nextel] is interested in . . . building out a network in high-cost areas." *July 2003 Ex Parte Comments*, at 5-6.[12]

- *September 24, 2003*: "Granting ETC Status to Nextel . . . [w]ill enhance Nextel Partners' ability to provide more comprehensive service coverage to underserved areas. . . . [Nextel] [w]ill provide all of the supported services throughout its designated areas. . . . Rural citizens should have the same choices and access to advanced mobile services that urban citizens enjoy." *September 2004 Ex Parte Presentation*, at 4.[13]

- *March 24, 2004*: "Nextel Partners hereby submits specific Construction Plans for its designated service territory in Virginia to demonstrate its projected use of USF High Cost Program funds to improve its network facilities, *and reach out to areas that it does not currently serve*. . . . [To] detail its progress in meeting its build-out plans in the service areas it is designated as an ETC, Nextel Partners will submit information annually to the Commission and USAC. The Commission recognized that this commitment would provide important information that could be used to evaluate an ETC's progress towards meeting its obligation to provide service throughout a service area." *Sprint/Nextel Supplement*, at 5-6 (emphasis added).

- *May 14, 2004*: "Nextel Partners has made specific commitments to the Commission . . . concerning [its] specific construction plans for improving service to designated areas and *reaching out into unserved portions of the designated service territory*." *Nextel Reply Comments to TDS*, at 8 (emphasis added).[14]

- *June 30, 2004*: "[Nextel] asked that the Commission move as quickly as possible to make USF support available . . . so that the benefits of increased competition

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[12] Ex Parte Comments of NPCR, Inc. d/b/a Nextel Partners in Reply to Late-Filed Comments of OPASTCO, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (July 23, 2003) (*"July 2003 Ex Parte Comments*").

[13] Ex Parte Notice from Albert J. Catalano and Matthew J. Plache, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45 (Sept. 24, 2003) ("*September 2004 Ex Parte Presentation*").

[14] Nextel Partners' Reply to Comments of RURAL ILECS Telecommunications Corp., *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (May 14, 2004) (*Nextel Reply Comments to Rural ILECS*).

> and mobility could be provided on an expedited basis to rural consumers." *June 2004 Ex Parte Letter*.[15]

The Commission expressly relied on these representations in granting Sprint/Nextel's ETC designation petition:

> Nextel has committed to commitments that closely track those set forth in the *Virginia Cellular Order* and *Highland Cellular Order*, including . . . annual reporting of progress towards build-out plans [and] specific commitments to construct new cell sites in areas outside its network coverage.
>
> . . .
>
> Nextel has [also] committed to submit records and documentation on an annual basis detailing . . . its progress towards meeting its build-out plans[.] We find that reliance on Nextel's commitments is reasonable and consistent with the public interest[.] We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Nextel satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

2004 Nextel ETC Order, ¶¶11, 25.

C. Nextel Has Not Honored The Commitments In Its ETC Designation Petition.

Sprint/Nextel has not honored the build-out commitments featured so prominently in its filings with the Commission, particularly with respect to rural areas. Instead, and as illustrated below, Sprint/Nextel's network build-out in Virginia has been largely confined to its existing coverage areas and to interstate highways. In fact, based on the most current information publicly available to petitioners, several rural study areas remain excluded altogether from Sprint/Nextel's coverage areas nearly four years after it first sought ETC designation.[16]

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[15] *June 2004 Ex Parte Letter*.

[16] Petitioners are not aware of the extent, if any, to which Sprint/Nextel relies on roaming agreements to provide service in these or other study areas in Virginia. As discussed above, Sprint/Nextel has repeatedly committed to use
(continued…)

As an initial matter, Sprint/Nextel has never evidenced a true commitment to expanding service into Virginia's rural markets. Even the initial construction proposals in Sprint/Nextel's 2004 response to *Virginia Cellular* largely excluded rural areas — an omission that should have raised red flags for the Commission. As background, Sprint/Nextel's 2003 ETC petition sought designation in 16 study areas in Virginia. In 14 of these, Sprint/Nextel sought designation throughout the entire study area, whereas it sought designation only in partial areas of the remaining two. Of these 14 "entire" study areas, 12 were rural and 2 were non-rural.[17] *Sprint/Nextel ETC Petition*, Attachment 1.

In its 2004 supplemental response to *Virginia Cellular*, Sprint/Nextel submitted its "Construction Plan for Virginia Designated Areas," which listed the specific study areas in which Sprint/Nextel planned new construction. *See Sprint/Nextel Supplemental Letter (Virginia)*.[18] Tellingly, of the 16 proposed "new sites" slated for construction in 2004, *fourteen* were located in the two *non-rural* study areas, whereas only two were in rural ones. *Compare Sprint/Nextel ETC Petition*, Attachment 1 *with Sprint/Nextel Supplemental Letter (Virginia).* Thus, at the time of its initial petition, Sprint/Nextel had no construction plans whatsoever for 10 of the 12 rural study areas, and had only one project each for the remaining two.

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universal service funds to expand its network infrastructure. In the Commission's words, Sprint/Nextel has made "specific commitments to construct new cell sites in areas outside its network coverage." *2004 Nextel ETC Order*, ¶11. The use of roaming agreements to extend coverage would not discharge this commitment and would undermine the goals of universal service.

[17] Rural ILECS's subsidiaries provide service in 3 of the 12 rural study areas in which Sprint/Nextel sought designation throughout the entire area.

[18] Letter updating *Sprint/Nextel Supplement* from Albert J. Catalano, *Federal-State Joint Board on Universal Service, NPCR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45 (June 2, 2004) (enclosing updated construction plans) ("*Sprint/Nextel Supplemental Letter*").

Sprint/Nextel's neglect of these designated rural study areas continues today, three years after obtaining ETC designation. Indeed, many of these areas remain wholly excluded from the company's coverage area. To identify this behavior, the Commission need only compare the scope of Sprint/Nextel's coverage area in Virginia with the geographical locations of its designated rural study areas, as illustrated by the attached map prepared by Rural ILECs. Declaration of Tim Ulrich ("Ulrich Dec."), and Ex. 1 ("Map No. 1"). Rural ILEC member TDS has companies that operate in three of the designated service areas. These companies are: (1) New Castle Tel. Co.; (2) Virginia Tel. Co.; and (3) Amelia Tel. Co. As Map No. 1 illustrates, two of these study areas (New Castle Tel. Co. and Virginia Tel. Co.) remain outside of Sprint/Nextel's coverage area, which is narrowly concentrated along Interstate 81 along Virginia's western border. In the third study area (Amelia Tel Co.), only the regions adjacent to the interstate fall within Sprint/Nextel's coverage. *Id.*

The lack of build-out in these study areas is further confirmed by disbursement data maintained by the Universal Service Administrative Company ("USAC") that indicates the number of lines for which Sprint/Nextel seeks USF support in each study area. According to information obtained from USAC, Sprint/Nextel has sought disbursement for a grand total of 4 lines (i.e., four customers) in the three Rural ILECs study areas since its designation in 2004. *See* Ulrich Dec., at ¶3, and Ex. 3 ("USAC Disbursement Chart"). Because all four lines are located in one study area, there is no evidence that Sprint/Nextel has provided service to any customers at all in the remaining two Rural ILECs study areas.

This systematic neglect is not limited to the three study areas discussed above, but extends throughout the state, as illustrated by the second attached map that shows the relationship between Sprint/Nextel's coverage areas and the other designated rural study areas.

Ulrich Dec., Ex. 2 ("Map No. 2"). Once again, several large rural study areas appear to be excluded completely (or nearly completely) from Sprint/Nextel's coverage areas (e.g., Citizens Tel. Coop., the southwestern portion of the Verizon South study area; the western NTELOS study area). *Id*. More troublingly, the few rural study areas where Sprint/Nextel actually does serve customers (and from which it receives the lion's share of USF support in Virginia) include densely-populated portions and/or areas intersected by interstates. These areas include Roanoke & Botetourt, NTELOS (eastern areas), Shenandoah, and Peoples Mutual. Ulrich Dec., at ¶3, Ex. 3 (USAC Disbursement Chart); *see also* Map No. 2.

To take but one example, the Roanoke & Botetourt study area lies on the outskirts of Roanoke, is intersected by Interstate 81, and ultimately extends north into more rural regions. Unsurprisingly, Sprint/Nextel's coverage is concentrated near the city itself and the interstate, and excludes entirely the northern, more rural portions of the study area. This pattern repeats itself throughout the State — indeed, Sprint/Nextel's coverage map could just as easily be used as an interstate highway map for lost drivers. *See* Map. No. 2.

The evidence here paints a clear, if troubling, picture. Sprint/Nextel included rural study areas in its initial ETC designation petition to persuade the Commission to grant its petition. Upon receiving designation, however, Sprint/Nextel promptly ignored these areas (which are the areas the USF program was intended to benefit) and has instead used USF money to subsidize construction within its existing coverage areas and along interstates.

II. THE COMMISSION SHOULD REVOKE SPRINT/NEXTEL'S ETC DESIGNATION IN VIRGINIA.

A. Nextel's ETC Designation Does Not Comply with the Commission's ETC Designation Criteria.

The current ETC designation process is governed by the regulations adopted in the 2005 *ETC Designation Order*. To become designated, an ETC applicant must satisfy specific eligibility requirements and establish that the designation serves the public interest. *ETC Designation Order*, ¶¶1-6. The *ETC Designation Order* explicitly states that these requirements apply not only to applicants, but are ongoing requirements for existing ETCs. If the Commission finds that an ETC does not comply with these designation criteria, it may revoke a carrier's designation. *Id.* ¶72 ("If a review of the [annual reporting] data . . . indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support . . . or revoke the carrier's designation[.]").

Under these rules, an ETC applicant is required to submit formal plans outlining how it will "improve service within the service area for which it seeks designation." *Id.* ¶23. The plan must "demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support." After being designated, ETCs are required to submit annual reports detailing, among other things, its progress in meeting the service goals described in their applications and "how [USF] support was used to improve signal quality, coverage, or capacity." *Id.* ¶¶68-69.

The Commission has recognized the importance of requiring newly-designated ETCs to improve and expand service by expressly premising carriers' ETC designations upon their build-out commitments. For instance, in a recent order granting ETC designation to Corr Wireless, the Commission explained:

> [W]e reject the . . . argument that Corr has not sufficiently demonstrated how receiving high cost support will alter its build out plans and that it is committed to those plans. As Corr notes in its reply comments, its commitments to provide service to requesting customers in a reasonable time frame and build out its network to improve its wireless coverage to closely track the commitments made in the *Virginia Cellular Order*. . . . In addition, as part of its ETC designation, Corr has committed to annually report information detailing . . . its progress towards meeting its build out plans. We note that if Corr fails to fulfill any of the requirements of section 214 of the Act, the Commission's rules, or terms of this Order, after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.[19]

Unlike in the *Corr Wireless* proceeding, however, the Commission does not have to rely on prospective commitments, but can instead review whether, after three years of ETC designation, Sprint/Nextel has met these specific commitments. What the Commission will find, however, is that Sprint/Nextel has made little to no progress in expanding service into its designated rural study areas. Indeed, several entire study areas continue to lie wholly outside Sprint/Nextel's coverage area, while in others, coverage (and USF disbursement) are concentrated in the portions of the study area adjacent to heavily populated towns and/or interstate highways.

In addition, and alternatively, Sprint/Nextel's continuing designation as an ETC does not meet the Commission's public interest standards. Indeed, Sprint/Nextel's actions in Virginia provide a textbook example of the cream-skimming concerns that gave rise to the Commission's public interest analysis. As noted above, Sprint/Nextel's application for ETC designation in several rural areas in Virginia, along with its representations to expand services in these areas,

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[19] Order, *Federal-State Joint Board on Universal Service, Corr Wireless, LLC, Petition of Corr Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, 21 FCC Rcd 1217, 1223 (2006).

gave the Commission the impression that Sprint/Nextel's designation would benefit Virginia's rural customers. After receiving ETC designation, however, Sprint/Nextel has focused its construction efforts on non-rural study areas and has largely limited its coverage areas to densely-populated areas and interstate highways.

Although the Commission has admittedly focused on cream-skimming concerns in the context of partial designation in rural study areas, Sprint/Nextel's actions in Virginia illustrate why these same concerns do not magically disappear when the ETC designation covers the entire study area. *ETC Designation Order*, ¶49. Accordingly, the Commission can and should conduct cream-skimming analyses in the "entire" rural study areas at issue here. Indeed, the *ETC Designation Order* did not rule conclusively that evidence of cream-skimming must be ignored in "entire" rural areas, but instead expressed skepticism that cream-skimming concerns would arise in this context because "the affected ETC is required to serve all wire centers in the designated service area." *Id*. Sprint/Nextel, however, has discredited this assumption by engaging in precisely the type of cream-skimming identified (and discouraged) in the *ETC Designation Order*:

> By serving a disproportionate share of the high-density portion of a service area, [a competitive] ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support. Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of cream-skimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas. *Id*. ¶49.

The Commission's analysis was spot on in the *Designation Order* and now should be applied to the instant situation.

B. The Commission Has Authority to Revoke Sprint/Nextel's ETC Designation.

Section 214(e)(6) gives the Commission the authority to designate competitive carriers as ETCs in rural areas. The statute does not *require* the Commission to designate ETCs in rural areas, but instead grants the Commission the discretion to determine whether the carrier meets federal requirements and that the designation serves the public interest:

> Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to 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 under this paragraph, 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 Commission shall find that the designation is in the public interest. 47 U.S.C. 214(e)(6).

Pursuant to this authority, the Commission has repeatedly held that it is has the authority to revoke ETC designations if carriers do not comply with its designation criteria and requirements. "If a review of the [annual reporting] data . . . indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support . . . or revoke the carrier's designation[.]" *ETC Designation Order*, ¶72.[20]

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[20] Order, *Federal-State Joint Board on Universal Service, Petition for Designation for the Navajo Reservation in Utah*, CC Docket No. 96-45, 22 FCC Rcd. 2479, at ¶33 (2007) ("if [the ETC] fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission may exercise its authority to revoke . . . ETC designation"); Order, *Federal-State Joint Board on Universal Service, Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona*, CC Docket No. 96-45, 22 FCC Rcd. 1866, at ¶28 (2007) (same); Order, *Federal-State Joint Board on Universal Service, North Carolina RSA 3 Cellular Telephone Company*
(continued…)

C. In the Alternative, the Commission Should Order Sprint/Nextel to Show Cause as to Why It Should Retain Status as an ETC in Virginia.

Should the Commission decide that it is unwilling to revoke Sprint/Nextel's designation as an ETC pursuant to the *ETC Designation Order* and *Corr Wireless*, the Commission should at a minimum require Sprint/Nextel to show cause as to why it should retain its ETC status in light of its three year failure to build out its network and expand coverage into rural areas. *See* 47 C.F.R. § 1.701 ("The Commission may commence any proceeding within its jurisdiction against any common carrier by serving upon the carrier an order to show cause."). In the absence of such a requirement, nothing prevents Sprint/Nextel from continuing in its current practice of systematically ignoring high-costs areas, in violation of its representations and its obligations under federal law.

CONCLUSION

Rural ILECs respectfully requests that the Commission revoke Sprint/Nextel's ETC designation in the state of Virginia. In the alternative, Rural ILECs requests that the Commission require Sprint/Nextel to show cause as to why it should be allowed to maintain its ETC designation.

Respectfully Submitted,

/s/ Gerard J. Waldron

Gerard J. Waldron
John Blevins
Covington & Burling LLP

Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, 21 FCC Rcd. 9151, at ¶30 (2006) (same).

1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-6000
Counsel to TDS Telecommunications Corp.

(via electronic filing) .

Patrick L. Morse
Senior Vice President – Regulatory Affairs
FairPoint Communications, Inc.
P.O. Box 199
Dodge City, KS 67801-0199
(620) 227-4409
pmorse@fairpoint.com

(via electronic filing)

Ralph L. Frye
Counsel
Burkes Garden Telephone Company, Inc.
P. O. Box 428
Burkes Garden, VA 24608
(276) 472-2161

Dated: June 4, 2007

CERTIFICATE OF SERVICE

I, Ryan Calo, hereby certify that on this 4th day of June, 2007, I caused copies of the foregoing **RURAL ILEC'S PETITION FOR REVOCATION OF SPRINT/NEXTEL'S ETC DESIGNATION IN VIRGINIA OR, ALTERNATIVELY, MOTION TO SHOW CAUSE** to be served on the following:

Robert Foosaner
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191
robert.foosaner@sprint.com

Best Copy and Printing, Inc.
445 12th Street, S.W., Room CY-B402,
Washington, D.C. 20554
www.bcpiweb.com

Renee Crittendon*
Deputy Bureau Chief
Wireline Competition Bureau
445 12th Street, S.W.
Washington, D.C. 20054
renee.crittendon@fcc.gov

Thomas Navin*
Bureau Chief
Wireline Competition Bureau
445 12th Street, S.W.
Washington, D.C. 20554
thomas.navin@fcc.gov

Jeremy Marcus*
Division Chief
Telecommunications Access Policy
Division, Wireline Competition Bureau
445 12th Street, S.W.
Washington, D.C. 20054
jeremy.marcus@fcc.gov

Jennifer McKee*
Deputy Division Chief
Telecommunications Access Policy
Division, Wireline Competition Bureau,
445 12th Street, S.W.
Washington, D.C. 20554
jennifer.mckee@fcc.gov

(via electronic filing)
Ryan Calo

* Indicates service by electronic mail.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition for Revocation of Sprint/Nextel's Designation as Eligible Telecommunications Carrier in the State of Virginia	)	
	)	
To: Wireline Competition Bureau	)	

DECLARATION OF TIMOTHY W. ULRICH

1. My name is Timothy W. Ulrich, and I submit this Declaration in support of the RURAL ILECs' Petition for Revocation of Sprint/Nextel's ETC Designation in Virginia or, Alternatively, Motion to Show Cause. I am currently Manager of Public Policy for TDS Telecommunications Corp. in Madison, Wisconsin, where I have worked for 8 years. My responsibilities include developing overall TDS public policy, evaluating the appropriate level of regulation in the 28 states in which TDS' Incumbent Local Exchange Carrier ("ILEC") operate, and the management of state and federal regulatory, legislative and industry relations for all TDS ILEC companies. As Manager-Public Policy, I have extensive experience with, and responsibility for, universal service matters and regularly work on matters such as intercarrier compensation and determining the level of competition within our exchanges by assessing the operations of competitors within our markets.

2. Attached as Exhibit 1 to this Declaration is a true and correct copy of a map (Map No. 1) that I prepared illustrating the Sprint/Nextel coverage area in

Virginia and identifying the three RURAL ILECs' study areas. The information regarding the Sprint/Nextel coverage area was obtained from a map database product "CoverageRight" which displays service deployment coverage areas of wireless carriers. This product was used in conjunction with and compared to coverage maps found on Sprint/Nextel's web site.

3. Attached as Exhibit 2 to this Declaration is a true and correct copy of a map that I prepared illustrating the Sprint/Nextel coverage area in Virginia and identifying additional study areas in Virginia in which Sprint/Nextel is designated as an ETC. The information regarding the Sprint/Nextel coverage area was obtained from CoverageRight.

4. Attached as Exhibit 3 to this Declaration is a true and correct copy of a table I prepared illustrating the amount of universal service support requested by Sprint/Nextel with respect to certain identified study areas. This disbursement information was obtained from Universal Service Administrative Company reports (e.g., USAC Reports HC06, HCL05, HC08, HC09 4th Qtr 2006).

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

Executed: May 30, 2007

Timothy W. Ulrich

Exhibit 1

Sprint/Nextel Cellular Coverage In Virginia

TDS Telecom

ILEC Locations

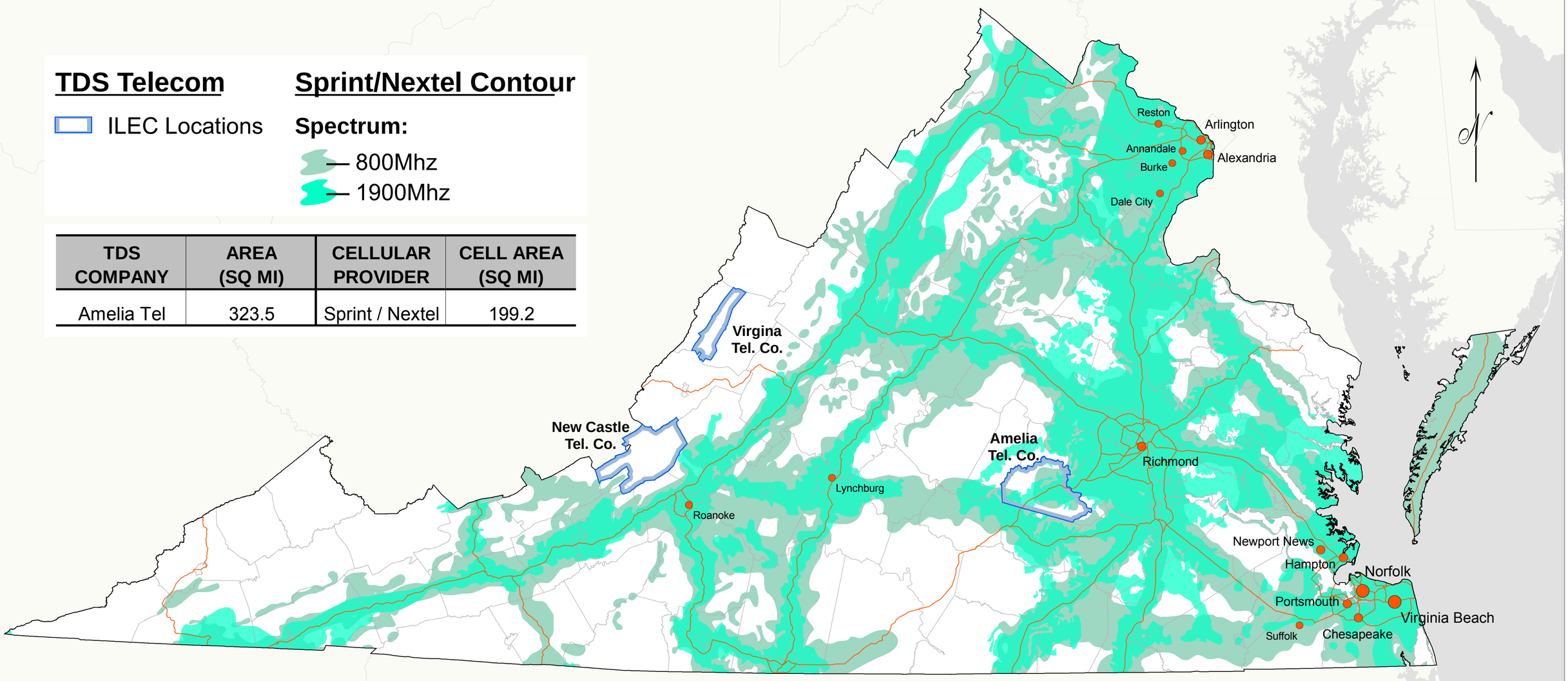
Sprint/Nextel Contour

Spectrum:

800Mhz

1900Mhz

TDS COMPANY	AREA (SQ MI)	CELLULAR PROVIDER	CELL AREA (SQ MI)
Amelia Tel	323.5	Sprint / Nextel	199.2



Major Cities

Population

50K - 100K

100K - 200K

> 200K

Major Highways

Interstate

Other Layers

Counties

0 25 50 75 100

Miles

Cellular coverage source: Coverage Right (November, 2006)

Prepared by Douglas Norgord, TDS Telecom NS OSP-Records File: VA_Nextel.mxd 02/01/07

Exhibit 2

Sprint/Nextel Cellular Coverage In Virginia

ILEC Locations

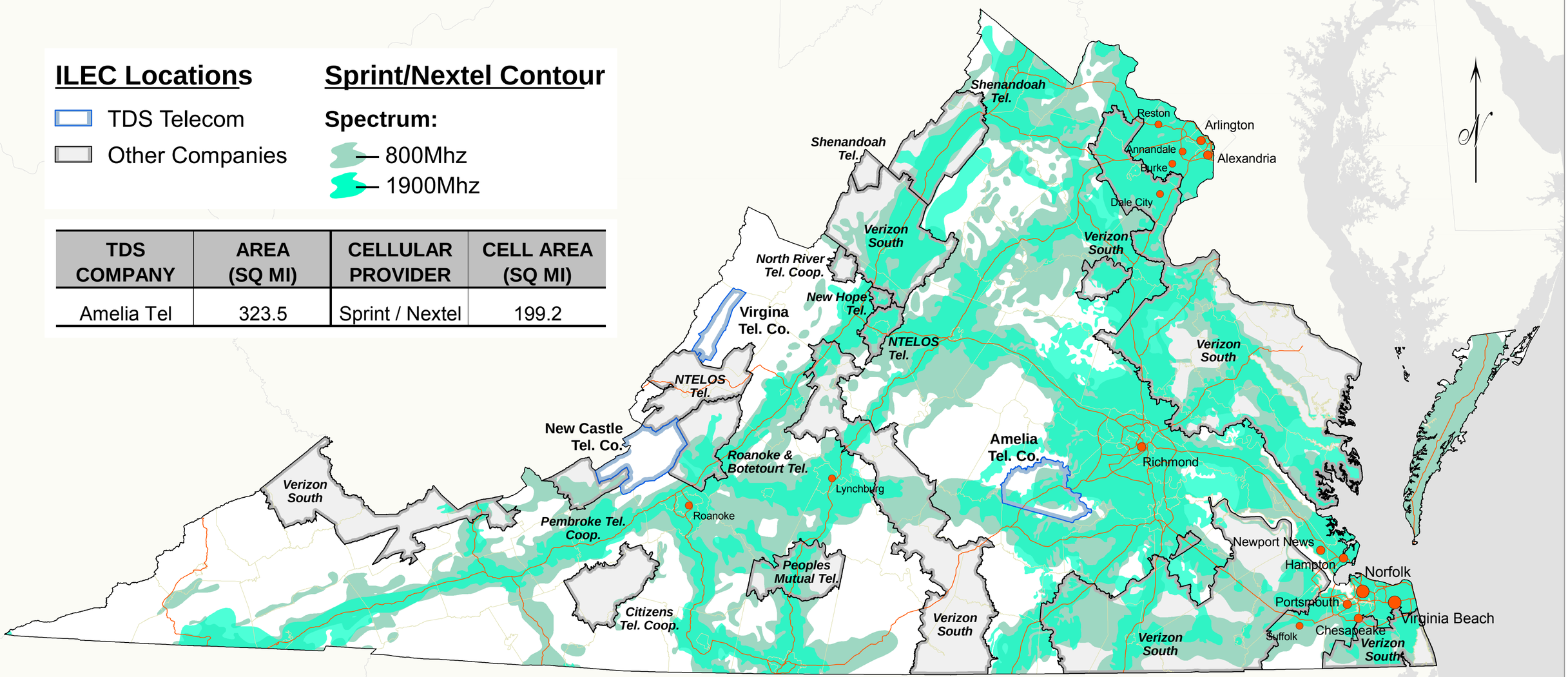
- TDS Telecom
- Other Companies

Sprint/Nextel Contour

Spectrum:

- 800Mhz
- 1900Mhz

TDS COMPANY	AREA (SQ MI)	CELLULAR PROVIDER	CELL AREA (SQ MI)
Amelia Tel	323.5	Sprint / Nextel	199.2



Major Cities

Population

- 50K - 100K
- 100K - 200K
- > 200K

Major Highways

- Interstate

Other Layers

- Counties

0 25 50 75 100

Miles

Cellular coverage source: Coverage Right (November, 2006)
Prepared by Douglas Norgord, TDS Telecom NS OSP-Records File: VA_Nextel_SelTelcos.mxd 02/05/07

Exhibit 3

	A	B	C	D	E	F	G
1	**NEXTEL REPORTED LINES**						
2							
3	**Quarter**	**ILEC Study Area Name**	**CETCS Study Area Nam**	**CETC Reported Lines**	**TDS Cost/Month**	**CETC Cost/Month**	
4	4Q 2004	New Castle	NPCR	3		$50.34	$151.02
5	4Q 2005	New Castle	NPCR	3		$50.34	$604.09
6	4Q 2006	New Castle	NPCR	3		$50.34	$604.09
7	1Q 2007	New Castle	NPCR	4	$16.78	$67.12	
8						**Total**	$1,359.21

TDS COSTS

Sources:

USAC Reports HC06, HCL05, HC08, HC09 4th Qtr 2006

Fund	SAC	Study Area Name	Rural	Type	ICLS	Certified	Num Loops	Monthly Support Amount				Annual Total Support Amount	Per Loop Per Month Amount
								Jan - Mar	Apr - Jun	Jul - Sep	Oct - Dec		
HCL	190217	AMELIA TEL. CORP.	R	C	Y	Y	5,862	$60,572	$63,109	$64,043	$64,043	$755,301	$10.74
ICLS	190217	AMELIA TEL. CORP.	R	C	Y	Y	5841	$25,360	$25,360	$27,039	$27,039	$314,394	$4.49
LSS	190217	AMELIA TEL. CORP.	R	C	Y	Y	5,862	$10,081	$10,081	$10,081	$10,081	$120,972	$1.72
		AMELIA TEL. CORP. Total											$16.94
HCL	190253	VIRGINIA TEL. CO.	R	A	Y	Y	2,295	$3,036	$2,773	$1,862	$1,862	$28,599	$1.04
ICLS	190253	VIRGINIA TEL. CO.	R	A	Y	Y	2289	$19,291	$19,291	$16,050	$16,050	$212,046	$7.72
LSS	190253	VIRGINIA TEL. CO.	R	A	Y	Y	2,295	$28,867	$28,867	$28,867	$28,867	$346,404	$12.58
SNA	190253	VIRGINIA TEL. CO.	R	A	Y	Y	2,295	$12,121	$12,384	$12,233	$12,490	$147,684	$5.36
		VIRGINIA TEL. CO. Total											$26.70
HCL	193029	NEW CASTLE TEL. CO.	R	C	Y	Y	2,363	$19,426	$19,554	$19,804	$19,804	$235,764	$8.31
ICLS	193029	NEW CASTLE TEL. CO.	R	C	Y	Y	2328	$12,660	$12,660	$15,609	$15,609	$169,614	$6.07
LSS	193029	NEW CASTLE TEL. CO.	R	C	Y	Y	2,363	$5,658	$5,658	$5,658	$5,658	$67,896	$2.39
		NEW CASTLE TEL. CO. Total											$16.78

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	**HIGH COST DISBURSEMENT DATA**															
2	This disbursement tool contains data from Jan 2003 through Dec 2006.															
3	**State**	**Spin**	**Study Area Code**	**Study Area Name**	**HCL**	**HCM**	**IAS**	**ICLS**	**LSS**	**LTS**	**SNA**	**SVS**	**Year**	**Month**		
4	VA	143019623	199003	NPCR, Inc.	$3,809	$0	$26,985	$14,768	$8,338	$0	$804	$0	2006	Dec		
5	VA	143019623	199003	NPCR, Inc.	$3,809	$0	$26,985	$14,768	$8,338	$0	$804	$0	2006	Nov		
6	VA	143019623	199003	NPCR, Inc.	$3,752	$0	($3,927)	$14,768	$8,338	$0	$804	$0	2006	Oct		
7	VA	143019623	199003	NPCR, Inc.	$3,815	$0	$0	$13,615	$8,338	$0	$804	$0	2006	Sep		
8	VA	143019623	199003	NPCR, Inc.	$3,815	$0	$0	$13,615	$8,338	$0	$13,589	$0	2006	Aug		
9	VA	143019623	199003	NPCR, Inc.	$3,716	$0	($33,252)	$13,615	$8,338	$0	$118	$0	2006	Jul		
10	VA	143019623	199003	NPCR, Inc.	$2,960	$0	$23,621	$15,799	$7,911	$0	$110	$0	2006	Jun		
11	VA	143019623	199003	NPCR, Inc.	$2,960	$0	$23,621	$15,799	$7,911	$0	$110	$0	2006	May		
12	VA	143019623	199003	NPCR, Inc.	$2,717	$0	$27,305	$15,799	$3,855	$0	$110	$0	2006	Apr		
13	VA	143019623	199003	NPCR, Inc.	$2,359	$0	$22,895	$14,334	$7,204	$0	$101	$0	2006	Mar		
14	VA	143019623	199003	NPCR, Inc.	$1,939	$0	$22,895	$14,334	$6,553	$0	$95	$0	2006	Feb		
15	VA	143019623	199003	NPCR, Inc.	$2,779	$0	$29,165	$14,334	$7,855	$0	$107	$0	2006	Jan		
16					$38,430	$0	$166,293	$175,548	$91,317	$0	$17,556	$0	**2006 Total**	**$322,851**		
17	VA	143019623	199003	NPCR, Inc.	$3,513	$0	$22,031	$14,360	$8,343	$0	$109	$0	2005	Dec		
18	VA	143019623	199003	NPCR, Inc.	$3,513	$0	$22,031	$14,360	$8,343	$0	$109	$0	2005	Nov		
19	VA	143019623	199003	NPCR, Inc.	$3,765	$0	$27,005	$14,360	$8,343	$0	$109	$0	2005	Oct		
20	VA	143019623	199003	NPCR, Inc.	$3,480	$0	$20,374	$13,364	$8,343	$0	$109	$0	2005	Sep		
21	VA	143019623	199003	NPCR, Inc.	$3,480	$0	$20,374	$13,359	$8,343	$0	$109	$0	2005	Aug		
22	VA	143019623	199003	NPCR, Inc.	$3,503	$0	$25,621	$13,362	$8,343	$0	$109	$0	2005	Jul		
23	VA	143019623	199003	NPCR, Inc.	$2,775	$0	$19,649	$11,845	$7,290	$0	$82	$0	2005	Jun		
24	VA	143019623	199003	NPCR, Inc.	$2,775	$0	$19,649	$11,845	$7,290	$0	$82	$0	2005	May		
25	VA	143019623	199003	NPCR, Inc.	$2,266	$0	$25,109	$11,845	$7,080	$0	$73	$0	2005	Apr		
26	VA	143019623	199003	NPCR, Inc.	$2,663	$0	$18,310	$11,105	$6,884	$0	$83	$0	2005	Mar		
27	VA	143019623	199003	NPCR, Inc.	$2,663	$0	$18,310	$11,104	$6,884	$0	($1,783)	$0	2005	Feb		
28	VA	143019623	199003	NPCR, Inc.	$2,634	$0	$21,848	$11,104	$6,884	$0	$482	$0	2005	Jan		
29					$37,030	$0	$260,311	$152,013	$92,370	$0	($327)	$0	**2005 Total**	**$281,086**		
30	VA	143019623	199003	NPCR, Inc.	$2,351	$0	$17,160	$10,165	$6,278	$0	$419	$0	2004	Dec		
31	VA	143019623	199003	NPCR, Inc.	$2,351	$0	$32,010	$10,165	$6,278	$0	$422	$0	2004	Nov		
32	VA	143019623	199003	NPCR, Inc.	$5,232	$0	$20,513	$21,846	$13,974	$0	$930	$0	2004	Oct		
33	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Sep		
34	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Aug		
35	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Jul		
36	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Jun		
37	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	May		
38	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Apr		
39	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Mar		
40	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Feb		
41	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2004	Jan		
42					$9,934	$0	$69,683	$42,176	$26,530	$0	$1,771	$0	**2004 Total**	**$80,411**		
43	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2003	Dec		
44	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2003	Nov		
45	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2003	Oct		
46	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2003	Sep		
47	VA	143019623	199003	NPCR, Inc.	$0	$0	$0	$0	$0	$0	$0	$0	2003	Aug		
48					$0	$0	$0	$0	$0	$0	$0	$0	**2003 Total**			
49					$85,394	$0	$496,287	$369,737	$210,217	$0	$19,000	$0	**Grand Total**	$684,348		