

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition for Revocation of Sprint/Nextel’s) CC Docket No. 96-45
ETC Designation in Virginia or,)
Alternatively, Motion to Show Cause of)
TDS Telecommunications Corp., FairPoint)
Communications, Inc. and Burkes Garden)
Telephone Co., Inc.)

REPLY COMMENTS OF NPCR, INC.

Sprint Nextel Corporation (Sprint Nextel), on behalf of its wholly-owned subsidiary NPCR, Inc. (NPCR), hereby respectfully submits its reply to comments on the above-captioned “Petition for Revocation of Sprint/Nextel’s ETC Designation in Virginia or, Alternatively, Motion to Show Cause” filed by TDS Telecommunications Corp., FairPoint Communications, Inc., and Burkes Garden Telephone Co., Inc. (collectively, the Rural Incumbent Local Exchange Carriers, or Rural ILECs).

In its Opposition to the Rural ILECs’ “Petition for Revocation,” filed August 8, 2007, NPCR conclusively demonstrated that it is in full compliance with all eligible telecommunications carrier (ETC) requirements and commitments, and that the Rural ILECs’ petition is otherwise fatally flawed. Nothing in the few comments filed in support of the Rural ILECs’ petition provides new or different information or analysis that would justify revocation of NPCR’s ETC designation in Virginia.¹ Rather, like the

¹ Notably, only three parties filed comments in this proceeding – the Rural Carriers (a coalition of rural wireline and wireless carriers); ITTA/OPASTCO/WRA (Independent Telephone and Telecommunications Alliance/Organization for the Promotion and

Rural ILECs' "Petition for Revocation" itself, the commenting parties simply reiterate policy positions opposing the Commission's rules governing competitive ETCs (CETCs). In other words, the Rural ILECs and the other rural carriers supporting their petition are merely using the NPCR Virginia designation as an opportunity to once again oppose competitive wireless carriers' participation in the high-cost universal service fund (USF) program. Finally, the three commenting parties based their support on the alleged "facts" – shown by NPCR to be erroneous – contained in the Rural ILECs' petition. The Rural ILECs' "Petition for Revocation" is without merit, and nothing in the comments has demonstrated otherwise. Therefore, the Commission should summarily dismiss the petition.

1. None of the Comments Contradict the Facts Established by NPCR in its Opposition.

As NPCR demonstrated in its Opposition, the Rural ILECs have failed to meet their heavy burden in this proceeding.² Indeed, their "Petition for Revocation" relies on

Advancement of Small Telephone Companies/Western Telecommunications Alliance); and NASUCA (National Association of State Utility Consumer Advocates).

² The FCC's rules do not address filings such as the Rural ILECs' self-styled "petition for revocation." However, administrative procedure generally, and the FCC's rules governing other types of petitions specifically, require the petitioner to state a cause of action and to bear the burden of proof of demonstrating that its requested action is warranted. *See, for example*, Section 1.401(c) (petitions for rulemaking must set forth "...all facts, views, arguments and data deemed to support the action requested..."); Section 1.721 (formal complaints must contain a "complete statement of facts..."); Section 1.728 (a formal complaint "which does not state a cause of action under the Communications Act will be dismissed"); Section 1.773(a) (petitions for rejection or suspension of tariff filings must include "the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act"). *See also* the Commission's finding in *Hi-Tech v. Sprint* ("It is well established that, in a formal complaint proceeding brought under section 208 of the Act, the complainant has the burden of proof to demonstrate that the carrier has violated the Act") (*Hi-Tech Furnace Systems, Inc. and Robert E. Kornfeld v. Sprint Communications Co., L.P.*, 14

Footnote continued on next page

little more than conclusory allegations concerning NPCR's purported failure to satisfy its ETC obligations, and the Rural ILECs offer no valid information to support such allegations. The Rural ILECs failed to cite a single specific FCC rule or order, statutory provision, or company commitment that NPCR has failed to satisfy. Nor could they -- as was further evidenced by the commenters' similar inability to cite any rule, requirement or statute allegedly violated by NPCR.

As demonstrated in its Opposition, not only is NPCR in full compliance with its ETC commitments and obligations, but it has consistently exceeded its service improvement commitments by installing more cell sites in its designated service area in Virginia than it originally proposed during the ETC application process.³ NPCR has also fulfilled all of the reporting obligations required by its *ETC Designation Order*⁴ and by Part 54 of the Commission's Rules.⁵

NPCR has also demonstrated that the alleged "facts" set forth in the Rural ILECs' "Petition for Revocation" are either incorrect or were intentionally misstated in an apparent attempt to exaggerate the scope of the alleged (albeit unspecified) violations. In its Opposition, NPCR identified several material misstatements in the "Petition for Revocation," including petitioners' mis-identification of the correct designated entity;

FCC Rcd 8040, 8044 (1999)). The FCC's holding regarding the imposition of the burden of proof on the complainant was upheld by the United States Court of Appeals (*Hi-Tech Furnace Systems, Inc. and Robert E. Kornfeld v. FCC*, 224 F.3d 781, 787 (D.C. Cir 2000)).

³ See NPCR Opposition, pp. 6-12. NPCR also provided this information to the FCC in its 2005 and 2006 annual compliance filings.

⁴ *Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier*, 19 FCC Rcd 16530 (2004); *Erratum* released September 13, 2004.

⁵ 47 C.F.R. §§ 54.202(b), 54.209, 54.513, 54.514, 54.809, and 54.904.

their incorrect and misleading representations about NPCR's designated service area in Virginia; and their incorrect statements about NPCR's receipt of high-cost USF support in Virginia.⁶

Unfortunately, the commenting parties chose to rely on, and to perpetuate, the same errors. For example, the Rural Carriers allege that NPCR received over \$6 million in USF support in Virginia in 2006 and \$4 million to date in 2007.⁷ This is entirely incorrect. NPCR's receipt of USF support within its designated service area in Virginia (SAC 199003) is a matter of public record,⁸ and the Universal Service Administrative Company (USAC) disbursement data reflects that NPCR, in fact, received only \$513,216 to serve its designated service area in 2006 and has received \$513,823 through June of 2007. Likewise, both the Rural Carriers and ITTA/OPASTCO/WRA allege that NPCR has sought support for only four (4) customers in rural study areas.⁹ As clearly demonstrated by the public USAC data upon which these commenters purport to rely, this too is patently incorrect. For example, in the 3rd Quarter of 2007, NPCR reported over 3,800 lines (as of September 30, 2006) in rural ILEC service areas in Virginia. More importantly, the public data reflects that NPCR has significantly increased the number of subscribers it serves in these areas since designation — thanks in large part to

⁶ See NPCR Opposition, pp. 2-6.

⁷ See Rural Carrier Comments, p. 7.

⁸ Sprint Nextel Corporation has also been designated in Virginia for an entirely separate service area (SAC 199005) comprised of non-rural Verizon wire centers in the eastern half of the State. USF support received by Sprint Nextel Corporation in SAC 199005 must, of course, be utilized to provide and improve service within that service area and cannot be utilized in NPCR's separate service area.

⁹ See Rural Carrier Comments, p. 5; ITTA/OPASTCO/WRA Comments, p. 5.

the service and network improvements that have been made possible by the Company's receipt of federal universal service support.

In its Opposition, NPCR also debunked the Rural ILECs' unsupported arguments that (1) a CETC must invest its high-cost USF support in specific geographic locations within its designated service area; (2) a CETC must mirror the coverage area of an incumbent local exchange carrier; (3) a CETC may not build out its network along highways, and (4) a CETC must build out its network to ensure coverage within its entire designated service area within a specified time period (in NPCR's case, in the 3 years since it was designated an ETC in Virginia). These alleged standards are nowhere to be found in any Commission rule or order.¹⁰ Thus, on purely factual grounds – the very grounds upon which the commenters relied -- the Rural ILECs' "Petition for Revocation" has been proven to be incorrect and unfounded, and its dismissal is warranted on this basis alone.

In addition to the factual errors in their petition, and the complete absence of factual justification for their requested relief, the Rural ILECs do not have standing to challenge a competitor's compliance with ETC rules and commitments. There are established mechanisms for ensuring carrier compliance with applicable federal ETC rules, including an ETC's provision of highly proprietary information to the Commission and USAC. Any review of such information, identification of any shortcomings, and any corrective action to be taken by an ETC, would be between the Commission and the ETC

¹⁰ NPCR Opposition, p. 9.

(and in some cases, USAC), and in no way involve other self-interested competitors.¹¹ The Rural ILECs' attempt to insert themselves in any other ETC's compliance review process is wholly inappropriate, particularly since it is nothing more than a reiteration of the Rural ILECs' desire for a change in the CETC rules. As such, the "Petition for Revocation" should be dismissed.

2. The Comments Offer No Information or Analysis to Support the Rural ILECs' "Petition for Revocation."

None of the three commenting parties provided any new information or analysis which would justify revocation of NPCR's ETC designation. Instead, these parties base their support "on the facts presented by" the Rural ILECs.¹² Because these illusory "facts" have been shown to be incorrect, it is clear that the commenting parties' reliance on such "facts" was misplaced and the support expressed by these parties should be withdrawn.

These parties also frame their comments in terms of their concern over the size of the high-cost universal service fund.¹³ NPCR is similarly concerned with the long-term sustainability of the universal service fund.¹⁴ However, revoking the ETC designation of

¹¹ NPCR Opposition, pp. 12-15. Indeed, the Rural Carriers acknowledged that "many" rural telephone companies have opposed the ETC applications of nationwide wireless carriers to preserve whatever competitive advantages they have over the national carriers (*see* Rural Carriers Comments, p. 2).

¹² *See* Comments of the Rural Carriers, p. 2, and NASUCA, p. 2; *see also*, ITTA/OPASTCO/WTA, p. 6 (simply citing the "data" included in the "Petition for Revocation"). NASUCA even acknowledged that the allegations in the petition may be "untrue" (p. 3).

¹³ *See* Comments of NASUCA, p. 2; Rural Carriers, p. 3; ITTA/OPASTCO/WTA, p. 3.

¹⁴ *See, e.g.*, Comments filed by Sprint Nextel Corporation in WC Docket No. 05-337 and CC Docket No. 96-45 on May 31, 2007 (regarding broad reform of the high cost USF mechanism) and on June 6, 2007 (on the proposed cap on USF payments to competitive ETCs).

a competitive carrier such as NPCR that is entirely in compliance with applicable requirements, purely as a means of reducing the size of the federal high-cost USF, would not be in the public interest, much less in compliance with FCC rules and precedent. Moreover, consumers living, working, attending school, or traveling in high-cost areas of Virginia, who are currently enjoying the tangible benefits of new or improved wireless coverage because of NPCR's deployment of dozens of new cell sites made possible in part by the grant of USF support, would no doubt take issue with the allegation that the provision of high-cost support to NPCR "benefits only Sprint/Nextel shareholders."¹⁵

Finally, two commenting parties note that the Commission has stated that it could suspend support disbursements or revoke the ETC designation of a carrier that fails to comply with the Commission's criteria for ETC designation.¹⁶ NPCR agrees that the Commission has the right and responsibility to ensure that carriers continue to satisfy the ETC criteria set forth in section 214(e) of the Act and Part 54 of the Commission's Rules. NPCR also agrees with the petitioners and commenting parties that the Commission should evaluate a carrier's compliance with the federal ETC requirements "on the basis of a well-developed factual record premised not merely on the claims of observers [in this case, unsupported allegations], but on the behavior of [NPCR] itself."¹⁷ In this case, there is no evidence that NPCR has failed to comply. To the contrary, as noted above and in NPCR's Opposition, all evidence demonstrates NPCR's full compliance with applicable ETC requirements, as well as the voluntary service commitments NPCR made

¹⁵ Rural Carriers Comments, p. 4.

¹⁶ See Rural Carriers, p. 6; ITTA/OPASTCO/WTA, p. 6, citing the *ETC Designation Order (Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, 6402 (para. 72) (2005))*.

¹⁷ See "Petition for Revocation," p 3; NASUCA Comments, p. 3.

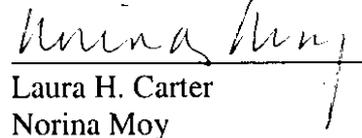
to the FCC at the time of designation. Indeed, pursuant to the filing requirements set forth in NPCR's *ETC Designation Order* and Commission rules 54.202 and 54.209, NPCR has filed with the Commission an annual progress report and service improvement plan demonstrating exactly how it has utilized federal high-cost universal service support to provide and improve service within its designated service area in Virginia. Thus, there is no basis to suggest that the Commission has failed to fulfill its "statutory responsibility" to assess NPCR's compliance since designation, as the petitioners and commenting parties insinuate.

Moreover, any new ETC compliance standards should first be developed in a rulemaking such as the Commission's anticipated rulemaking proceeding "to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act."¹⁸ Adoption of compliance standards in the context of a rulemaking proceeding ensures that such standards will be based on a complete public record; will be known in advance to all parties; and will be applied prospectively to all ETCs in a non-discriminatory fashion. Thus, to the extent the Rural ILECs propose changes to CETC obligations, which is precisely what they are attempting to do in their petition, those proposals should be raised in a rulemaking proceeding, not in the midst of an attempt to revoke another carrier's designation.

¹⁸ *ETC Designation Order*, 20 FCC Rcd at 6400 (para. 68).

Respectfully submitted,

SPRINT NEXTEL CORP., on behalf of
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A handwritten signature in cursive script, appearing to read "Laura H. Carter", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Nextel Corporation was delivered by electronic mail, or First Class, postage prepaid, U.S. Mail on this 23rd day of August 2007 to the below-listed parties.


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