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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

Case No. GNR-T-03-8

Case No. GNR-T-03-16

DIRECT TESTIMONY OF SCOTT PEABODY

FOR NPCR, INC. d/b/a NEXTEL PARTNERS

1 **I. INTRODUCTION**

2 **Q: PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, POSITION AND BUSINESS**
3 **ADDRESS.**

4 A: My name is Scott Peabody. I am employed by Nextel Partners, Inc. as a Director in its
5 Engineering Department. My business address is 4500 Carillon Point, Kirkland, WA
6 98033.

7 **Q: WHAT ARE YOUR RESPONSIBILITIES WITHIN NEXTEL PARTNERS, INC.?**

8 A: I provide engineering services for Nextel Partners, Inc. and its affiliates and indirect
9 wholly owned subsidiaries, including the Petitioner NPCR, Inc. (collectively, "Nextel
10 Partners" or the "Company"). In particular, I have responsibilities relating to spectrum
11 management as well as various engineering and network matters.

12 **Q: PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

13 A: I have worked in the telecommunications industry for approximately seven years. I have
14 performed engineering and operations functions for Nextel Partners and AT&T Wireless.
15 I have also performed planning, systems development, network operations and
16 engineering functions for a CLEC venture.

17 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

18 A: I obtained a BS in Electrical Engineering from the University of Maine, and an MBA
19 from the University of Washington.

20 **Q: DOES NEXTEL PARTNERS CURRENTLY PROVIDE TELECOMMUNICATIONS SERVICE IN**
21 **IDAHO?**

22 A: Yes. Nextel Partners is a "telecommunications carrier" as defined in Section 153(44) of
23 the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 153(44). Nextel

1 Partners is authorized by the Federal Communications Commission ("FCC") and
2 provides commercial mobile radio services ("CMRS") in areas also served by Albion
3 Telephone Company, Filer Mutual Telephone, Farmers Mutual Telephone, Mud Lake
4 Telephone Cooperative, Project Mutual Telephone, Rural Telephone Company, and
5 Citizens Telecommunications Company of Idaho. The corporate parent company, Nextel
6 Partners, Inc., is publicly held and traded, and serves more than 1,000,000 subscribers
7 nationwide under the brand name "Nextel." Nextel Partners typically serves more rural
8 license areas, while Nextel Communications, Inc. ("Nextel Communications") (a separate
9 publicly traded entity) serves in urban license areas. Together, Nextel Partners and
10 Nextel Communications provide service in areas of the United States where
11 approximately 240 million people live or work.

12 **Q: WHAT IS THE RELATIONSHIP BETWEEN NEXTEL PARTNERS AND NEXTEL**
13 **COMMUNICATIONS?**

14 A: Nextel Communications and Nextel Partners are separately owned and operated public
15 corporations, both publicly traded on the Nasdaq market, with different boards of
16 directors and executive officers. Nextel Communications, through a subsidiary, is Nextel
17 Partners' largest shareholder, owning approximately 31% of Nextel Partners' common
18 stock.

19 **Q: HOW LONG HAS NEXTEL PARTNERS BEEN OPERATING?**

20 A: Nextel Partners was formed in 1998 to provide service under the "Nextel" brand name in
21 small and rural markets. We built out our network rapidly, beginning operations in 1999
22 and launching service in Idaho in 2000.

23 **Q: TURNING TO THE MATTER OF UNIVERSAL SERVICE, DOES NEXTEL PARTNERS**
24 **CURRENTLY CONTRIBUTE TO THE FUNDING FOR UNIVERSAL SERVICE?**

1 A: Yes. Federal regulations require CMRS carriers such as Nextel Partners to contribute a
2 portion of their revenues to the funding of federal universal service, and some states
3 require Nextel Partners to contribute to the funding of state universal service programs as
4 well.

5 **Q: IS THE COMPANY PRESENTLY ABLE TO DRAW FROM FEDERAL UNIVERSAL SERVICE**
6 **FUNDS FOR THE PROVISION OF THE SUPPORTED SERVICES IN IDAHO?**

7 A: No. Until it is designated as an eligible telecommunications carrier ("ETC") for those
8 areas it serves in Idaho, Nextel Partners is not able to receive any federal universal
9 service funds to support its provision of universal services to Idaho consumers. Unlike
10 urban areas where carriers are able to compete based upon the cost of providing service,
11 rural high-cost areas will not be able to experience the full benefits of customer choice
12 unless competitive carriers are designated as ETCs and have access to the support
13 mechanisms designed to benefit rural consumers.

14 **Q: IS THE COMPANY SEEKING FUNDING FROM STATE UNIVERSAL SERVICE MECHANISMS?**

15 A: No. Although Idaho has a state universal service fund, *see* Idaho Code §62-610, *et seq.*,
16 Nextel Partners' Petition in this proceeding seeks designation only for purposes of
17 receiving federal universal service funding in the rural telephone company areas set forth
18 in **Exhibit 106**.

19 **Q: WILL NEXTEL PARTNERS SEEK STATE UNIVERSAL SERVICE FUNDING IN THE FUTURE?**

20 A: We have not decided. If at some point in the future Nextel Partners decides to apply for
21 state universal service funding, Nextel Partners will file a new petition to address the
22 issues specific to state ETC designation.

23 **Q: WHAT ARE THE PURPOSES OF YOUR TESTIMONY?**

1 A: The purposes of my testimony are two-fold: first, I will describe how Nextel Partners
2 provides the FCC's supported services in Idaho, and state the Company's commitment to
3 include those services in its universal service offerings. Second, I will explain the
4 "public interest" standard that applies to designating an additional ETC such as Nextel
5 Partners in areas served by rural telephone companies and demonstrate why designating
6 Nextel Partners in these areas significantly benefits the public interest. Because Nextel
7 Partners meets the applicable criteria, and because the public interest of Idaho and its
8 consumers favor designating Nextel Partners an ETC in the specified rural telephone
9 company study areas, its ETC Petition ("Petition") should be granted.

10 **II. REQUIREMENTS FOR ETC DESIGNATION**

11 **Q: WHEN DID NEXTEL PARTNERS FILE ITS ETC PETITION IN THE STATE OF IDAHO?**

12 A: Nextel Partners' ETC Petition was filed with the Idaho Public Utilities Commission (the
13 "Commission") on April 28, 2003.

14 **Q: WHY IS NEXTEL PARTNERS SEEKING DESIGNATION AS AN ETC?**

15 A: Section 214(e) of the Act provides that a common carrier must obtain designation as an
16 ETC from the Commission to be eligible to receive federal universal service support.

17 **Q: IS A WIRELESS PROVIDER LIKE NEXTEL PARTNERS ELIGIBLE FOR FEDERAL UNIVERSAL
18 SERVICE SUPPORT?**

19 A: Yes. Both the Act and the FCC's decisions establish the directives for the Commission to
20 follow in making an ETC designation. Section 214(e) specifically provides that any
21 common carrier, including a wireless provider such as Nextel Partners, may be
22 designated as an ETC for federal universal service support purposes, provided that carrier

1 meets the specific criteria set forth in Section 214(e)(1) of the Act. The FCC stated this
2 very clearly in a 1997 Order:

3 We agree with the Joint Board's analysis and recommendation that any
4 telecommunications carrier using any technology, including wireless
5 technology, is eligible to receive universal service support if it meets the
6 criteria under Section 214(e)(1).

7 *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45,
8 Report and Order, FCC 97-157, ¶ 145 (rel. May 7, 1997) ("*Universal Service Order*").
9 Although this Commission has not yet designated a wireless carrier as an ETC, state
10 commissions and the FCC have designated wireless ETCs in over 20 states, and wireless
11 carriers are now assisting in the provision of universal services in high cost areas
12 throughout the nation. *See, e.g., RCC Holdings, Inc. Petition for Designation as an*
13 *Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State*
14 *of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3181, ¶ 13
15 (rel. Nov. 27, 2002) ("*RCC Order*"); *Western Wireless Corporation*, CC Docket No. 96-
16 45, Memorandum Opinion and Order, DA 00-2896 (rel. Dec. 26, 2000) ("*Wyoming*
17 *Order*"), *aff'd*, FCC 01-311 (rel. Oct. 19, 2001).

18 **Q: HAS NEXTEL PARTNERS BEEN DESIGNATED AN ETC IN ANY OTHER JURISDICTION?**

19 A: Yes. Nextel Partners was recently (May 15, 2003) designated an ETC in the state of
20 Iowa by the Iowa Utilities Board. *See In Re: NPCR, Inc., d/b/a Nextel Partners*, Docket
21 No. 199 IAC 39.2(4), Order Designating Eligible Carrier (May 15, 2003).

22 **Q: WHAT ARE THE REQUIREMENTS FOR OBTAINING ETC DESIGNATION?**

23 A: The eligibility requirements are set forth in the Act, and are as follows:

24 A common carrier designated as an eligible telecommunications carrier
25 under paragraph (2) or (3) shall be eligible to receive universal service

1 support in accordance with section 254 and shall, throughout the service
2 area for which the designation is received:

3 (A) Offer the services that are supported by Federal universal
4 service support mechanisms under Section 254(c), either using its
5 own facilities or a combination of its own facilities and resale of
6 another carrier's services (including the services offered by another
7 eligible telecommunications carrier); and

8 (B) Advertise the availability of such services and the charges
9 therefor using media of general distribution.

10 *See* 47 U.S.C. § 214(e)(1) (emphasis added). In areas served by a rural LEC, the
11 Commission must also make a "public interest" finding. *Id.* § 214(e)(2).

12 **Q: IS IT YOUR UNDERSTANDING THAT NEXTEL PARTNERS IS ENTITLED TO BE DESIGNATED**
13 **AS AN ETC IF IT DEMONSTRATES THAT IT IS CAPABLE OF MEETING ALL OF THE**
14 **OBLIGATIONS IMPOSED BY SECTION 214(e) OF THE ACT?**

15 A: Yes. In areas served by a rural telephone company, the Act requires the Commission to
16 designate Nextel Partners as an ETC if it demonstrates an ability to perform all of the
17 obligations set forth in 47 U.S.C. § 214(e)(1) and also finds that designating Nextel
18 Partners as an ETC is in the public interest.

19 **Q: THE FIRST CRITERION FOR ETC DESIGNATION UNDER SECTION 214(e)(1) IS COMMON**
20 **CARRIER STATUS. IS NEXTEL PARTNERS A COMMON CARRIER?**

21 A: Yes. Nextel Partners is a "common carrier" for purposes of obtaining ETC designation
22 under 47 U.S.C. § 214(e)(1). A common carrier is generally defined in 47 U.S.C. §
23 153(10) as "any person engaged as a common carrier for-hire" in interstate or foreign
24 communications utilizing either wire or radio technology, except for radio broadcasters.
25 The FCC's regulations specifically provide that a specialized mobile radio service, such
26 as that provided by Nextel Partners, is a common carrier service regulated as commercial
27 mobile radio service ("CMRS"). *See* 47 C.F.R. § 20.9(a)(4).

1 **Q: THE SECOND REQUIREMENT IS THAT NEXTEL PARTNERS OFFER THE "SUPPORTED**
2 **SERVICES." WHAT ARE THE SUPPORTED SERVICES THAT MUST BE OFFERED?**

3 A: The FCC has identified the following services and functionalities as the core services to
4 be offered by an ETC and supported by federal universal service support mechanisms:

- 5 1. voice-grade access to the public switched network;
- 6 2. local usage;
- 7 3. dual tone multi-frequency signaling or its functional equivalent;
- 8 4. single-party service or its functional equivalent;
- 9 5. access to emergency services;
- 10 6. access to operator services;
- 11 7. access to interexchange services;
- 12 8. access to directory assistance;
- 13 9. toll limitation for qualifying low-income consumers

14 *See 47 C.F.R. § 54.101(a).*

15 **Q: CAN NEXTEL PARTNERS CURRENTLY PROVIDE THE SUPPORTED SERVICES SET FORTH**
16 **ABOVE USING ITS NETWORK THAT IS IN PLACE TODAY?**

17 A: Yes. Nextel's Partners' present network can provide all of these services to consumers in
18 Idaho. In fact, Nextel Partners *already* provides all of these services in Idaho, with the
19 exception of the ninth supported service, "toll limitation for qualifying low-income
20 consumers." As I will explain below, the "toll limitation" service is a service linked to
21 the federal "Lifeline" program targeted at meeting the needs of low income consumers,
22 and Nextel Partners cannot participate in the federal Lifeline program until it receives its
23 ETC designation.

1 **Q: COULD YOU EXPLAIN EACH OF THE SUPPORTED SERVICES AND HOW NEXTEL PARTNERS**
2 **PROVIDES, OR WILL PROVIDE THESE SERVICES?**

3 A: Yes. With the sole exception of "toll limitation for qualifying low income consumers," as
4 discussed below, Nextel Partners *presently* provides each of the supported services
5 identified by the FCC in 47 C.F.R. § 54.101(a) as follows:

6 a. Voice-grade access to the public switched telephone network means the
7 ability to make and receive phone calls, within the 300 to 3000 Hertz frequency range.
8 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone
9 companies all Idaho customers of Nextel Partners are able to make and receive calls on
10 the public switched network within the FCC's specified bandwidth.

11 b. Local usage. An ETC must include an amount of local usage determined
12 by the FCC as part of a universal service offering. 47 C.F.R. § 54.101(a)(2). To date, the
13 FCC has specifically decided not to require unlimited local usage, and has not set a
14 minimum amount of local usage required to be included in a universal service offering.
15 *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45,
16 Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003). Nextel
17 Partners will meet the local usage requirement by providing local usage in each universal
18 service offering.

19 c. Dual-tone, multi-frequency ("DTMF") signaling, or its functional
20 equivalent. DTMF is a method of signaling that facilitates the transportation of call set-
21 up and call detail information. 47 C.F.R. § 54.101(a)(3). Nextel Partners currently uses
22 out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is
23 functionally equivalent to DTMF signaling

1 d. Single-party service or its functional equivalent. "Single-party service"
2 means that only one party will be served by a subscriber loop or access line, in contrast to
3 a multi-party line. 47 C.F.R. § 54.101(d). *In the Matter of Federal-State Joint Board on*
4 *Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157, ¶ 162 (rel. May 7,
5 1997) ("*Universal Service Order*"). Nextel Partners provides the functional equivalent of
6 single-party service – a dedicated message path for the length of all customer calls. 47
7 C.F.R. § 54.101(a)(4).

8 e. Access to emergency services. The ability to reach a public emergency
9 service provider by dialing 911 is a required service in any universal service offering.
10 Enhanced 911 or "E911," which includes the capability of providing both automatic
11 numbering information ("ANI") and automatic location information ("ALI"), is only
12 required if a public safety answering point ("PSAP") makes arrangements with the local
13 provider for the delivery of such information. 47 C.F.R. § 54.101(a)(5). Nextel Partners
14 provides universal access to the 911 system for its customers, and has implemented and
15 will continue to implement E911 services consistent with the FCC's Rules and Orders and
16 local PSAP requests. To date, Nextel Partners has deployed Phase I and Phase II E911 in
17 Ada County. The only other E911 request received in Idaho was from Owyhee County.
18 That request requires no action at this time because the company has no cell sites that
19 would route to this county.

20 f. Access to operator services. Access to operator services is defined as any
21 automatic or live assistance provided to a consumer to arrange for the billing or
22 completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Nextel Partners meets

1 this requirement by providing all of its customers with access to operator services
2 provided by either the Company or other entities (e.g. LECs, IXC, etc.).

3 g. Access to interexchange service. A universal service provider must offer
4 consumers access to interexchange service to make and receive interexchange calls.
5 Nextel Partners presently meets this requirement by providing all of its customers with
6 the ability to make and receive interexchange or toll calls through direct interconnection
7 arrangements the Company has with one or more interexchange carriers (IXCs).

8 h. Access to directory assistance means the ability to place a call directly to
9 directory assistance. 47 C.F.R. § 54.101(a)(8). Nextel Partners meets this requirement
10 by providing all of its customers with access to directory assistance by dialing "411."

11 i. Toll limitation for qualifying low income consumers. FCC Rule
12 54.101(a)(9) requires the provision of "toll limitation" to requesting Lifeline customers,
13 and defines toll limitation with reference to the FCC's Lifeline Rules. Lifeline Rule
14 54.400(d) defines "toll limitation" as either "toll blocking" or "toll control" if a carrier is
15 incapable of providing both, but as both "toll blocking" and "toll control" if a carrier can
16 provide both. Toll blocking allows consumers to elect not to allow the completion of
17 outgoing toll calls. Toll control allows consumers to specify a certain amount of toll
18 usage that may be incurred per month or per billing cycle. 47 C.F.R. § 54.500(b)-(c).
19 Nextel Partners is not, at this time, capable of providing toll control. To comply with this
20 rule, Nextel Partners will provide toll blocking to requesting Lifeline customers.

21 **Q: IS NEXTEL PARTNERS REQUIRED TO OFFER TOLL BLOCKING TO QUALIFYING LOW-**
22 **INCOME CONSUMERS PRIOR TO ITS DESIGNATION AS AN ETC?**

1 A: No. The toll blocking offering is part of a carrier's obligation to offer supported services
2 after designation as an ETC: it is part of the federal Lifeline program, and only ETCs can
3 participate in Lifeline. See 47 C.F.R. §§ 54.400 *et seq.* The reference to "qualifying" low
4 income consumers means that the consumers being offered toll blocking have first
5 demonstrated their eligibility for Lifeline assistance by showing either that they qualify
6 under pertinent state-imposed guidelines, or where no such guidelines exist, that they
7 receive certain other types of federal financial assistance, such as Medicaid, food stamps,
8 Supplemental Security Income, federal public housing assistance, or Low-Income Home
9 Energy Assistance Program assistance. Nextel Partners presently offers toll blocking on
10 international calls to all of its customers, and upon designation as an ETC, will offer toll
11 blocking to eligible Lifeline support recipients in Idaho.

12 **Q: WILL NEXTEL PARTNERS PROVIDE UNIVERSAL SERVICES ONCE DESIGNATED?**

13 A: Yes. All of Nextel Partners' voice offerings contain the FCC's supported services.
14 Attached as **Exhibit 102** are Nextel Partners' service plans available today through
15 www.Nextel.com and 800-NEXTEL9, and our standard customer service agreement.¹
16 Nextel Partners' universal service offerings will be provided to consumers using the same
17 phones, antennae, cell sites, towers, trunk lines, mobile switching center, and
18 interconnection facilities used today. **Exhibits 103 and 104** are maps showing our
19 current coverage overlaid on the rural telephone company study areas set forth in
20 **Exhibit 106**. Nextel Partners also regularly deploys additional cell sites and channels, as

¹ The local calling area for these plans is the state of Idaho. Other rate plans may be available through other distribution channels. All rate plans that include the supported services would qualify for universal service funding.

1 necessary, to maximize signal coverage and service availability. The maps in **Exhibits**
2 **103** and **104** depict a propagation analysis employing Nextel Partners' existing facilities,
3 and assuming a three-watt wireless phone. The extent of Nextel Partners' existing
4 coverage in and around Idaho does show Nextel Partners' significant investment in
5 facilities for its Idaho customers, and its commitment to serving their mobile
6 communications needs.

7 **Q: IS NEXTEL PARTNERS REQUIRED TO DEMONSTRATE THAT IT CAN SERVE EVERY**
8 **CUSTOMER IN ITS PROPOSED SERVICE AREA PRIOR TO DESIGNATION AS AN ETC IN**
9 **IDAHO?**

10 A: No. As established by the FCC, applicable law does not require Nextel Partners to show
11 that it can serve every customer throughout each study area for which it seeks designation
12 in advance of receiving a grant of ETC status. *In the Matter of Federal-State Joint Board*
13 *on Universal Service Western Wireless Corporation Petition for Preemption of an Order*
14 *of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket 96-45,*
15 *FCC 00-248, 15 FCC Rcd at 15175 (rel. August 10, 2000) ("Declaratory Ruling").* What
16 the law does require is that, once Nextel Partners is designated an ETC, Nextel Partners
17 respond to a "reasonable request for service" throughout each of the areas for which it
18 seeks designation. *Id.* As is clear from the Idaho coverage map, Nextel Partners is well-
19 equipped to respond to "reasonable requests for service" throughout the rural telephone
20 company study areas for which it seeks designation in Idaho, and Nextel Partners will
21 meet all of its legal obligations.

22 **Q: A THIRD REQUIREMENT FOR DESIGNATION AS AN ETC IS TO ADVERTISE THE**
23 **AVAILABILITY OF THE SUPPORTED SERVICES. HOW DOES NEXTEL PARTNERS INTEND**
24 **TO ADVERTISE THE AVAILABILITY OF THE SUPPORTED SERVICES?**

1 A: Based upon the recommendations of the Joint Board, the FCC has not adopted particular
2 standards regarding advertising using media of general distribution under Section
3 214(e)(1). See *Universal Service Order*, ¶ 148. Nextel Partners will advertise the
4 availability of the supported services and the corresponding charges in a manner that
5 fully informs the general public within the designated service areas of such services and
6 charges. The Nextel brand is currently advertised jointly by Nextel Partners and Nextel
7 Communications through several different media, including newspaper, television, radio,
8 and billboard advertising. This collaborative advertising is designed to increase
9 awareness of the "Nextel" brand name, service offerings and unique services offered by
10 each company. Nextel Partners' nationwide advertising costs totaled approximately
11 \$35.1 million for the year ending December 31, 2002. In Idaho, Nextel Partners
12 collaboratively advertises with Nextel Communications through media of general
13 distribution, including newspaper, magazine, billboard and yellow page advertisements,
14 as well as radio and television ads. In addition, Nextel Partners advertises through point-
15 of-sale marketing efforts at various wireless-telecommunications and general-electronic
16 retail stores and over the Internet at www.Nextel.com. Nextel Partners also maintains
17 various retail store locations throughout its authorized service areas, which provide an
18 additional source of advertising. Nextel Partners will use the same media of general
19 distribution that it currently employs to advertise its universal service offerings
20 throughout the service areas. Attached as **Exhibit 105** contains Nextel Partners' general
21 plan regarding advertising for Idaho.

22 **Q: IN WHAT SERVICE AREAS IS NEXTEL PARTNERS SEEKING DESIGNATION AS AN ETC?**

1 A: The FCC defines the term "service area" as a geographic area established by a state
2 commission for the purpose of determining universal service obligations and support
3 mechanisms. *See* 47 C.F.R. § 54.207(a). In those areas served by a rural telephone
4 company, service area means the company's study area unless the state and the FCC, after
5 taking into account recommendations of the Federal-State Joint Board on Universal
6 Service, establish a different definition of service area for a rural company. *See* 47
7 C.F.R. § 54.207(b). Pursuant to 47 U.S.C. § 214(e)(1), Nextel Partners requests
8 designation as an ETC throughout the areas as set forth in **Exhibit 106** ("Designated
9 Areas"). These Designated Areas all consist of study areas of rural telephone companies.

10 **Q: CAN NEXTEL PARTNERS SERVE THE ENTIRE STUDY AREA OF EACH RURAL TELEPHONE**
11 **COMPANY CURRENTLY SERVING AREAS FOR WHICH NEXTEL PARTNERS SEEKS ETC**
12 **DESIGNATION?**

13 A: Except for the study area of Citizens Telecommunications Company of Idaho
14 ("Citizens"), Nextel Partners seeks designation for the entire study area for each affected
15 rural telephone company. For the area served by Citizens, Nextel Partners seeks ETC
16 designation conditioned on the Commission and FCC redefining Citizens' service area to
17 an exchange-by-exchange basis pursuant to 47 C.F.R. § 54.207(b).

18 **Q: WHAT ARE THE REQUIREMENTS FOR REDEFINING THE CITIZENS' STUDY AREA TO AN**
19 **EXCHANGE BASIS?**

20 A: The Act and the FCC's regulations authorize the FCC and the Commission to act in
21 concert to develop an alternative service area for a rural telephone company in
22 accordance with 47 C.F.R. § 54.207(c)-(d). The sole requirement in establishing a
23 service area other than the study area is that the FCC and the State commission each give
24 full consideration to the Joint Board's recommendations and explain their rationale for

1 reaching a different conclusion. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Universal*
2 *Service Order*, ¶ 187.

3 **Q: WHAT JOINT BOARD RECOMMENDATIONS MUST THE COMMISSION CONSIDER?**

4 A: The FCC identified three factors initially recommended by the Joint-Board which should
5 be considered by the Commission and the FCC when determining the appropriateness of
6 redefining a rural telephone company's service area. The first factor is the risk of cream-
7 skimming. The FCC noted that if a competitor were required to serve a rural telephone
8 company's entire study area, the risk of "cream-skimming" would be reduced because a
9 competitive ETC would be prevented from selectively targeting service only to the lowest
10 cost exchange of the rural ILEC's study area. *Universal Service Order*, ¶ 189. As the
11 Joint Board explained:

12 We note that some commenters argue that Congress presumptively
13 retained study areas as the service area for rural telephone
14 companies in order to minimize "cream skimming" by potential
15 competitors. Potential "cream skimming" is minimized because
16 competitors, as a condition of eligibility, must provide services
17 throughout the rural telephone company's study area. Competitors
18 would thus not be eligible for universal service support if they
19 sought to serve only the lowest cost portions of a rural telephone
20 company's study area.
21

22 *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, 12
23 FCC Rcd. 87, ¶ 172 (rel. Nov. 8, 1996) ("*Joint Board Recommendations*").

24 Second, a State commission and the FCC must consider the regulatory status enjoyed by
25 rural telephone companies under the Act. The FCC determined that initially establishing
26 a study area for a rural telephone company's service area was appropriate, at least
27 temporarily, in recognition of the different treatment afforded to smaller rural telephone

1 companies which are exempt from certain of the Act's requirements. *Universal Service*
2 *Order*, ¶ 189. In making its recommendation, the Joint Board had reasoned:

3 For example, rural telephone companies are initially exempt from
4 the interconnection, unbundling, and resale requirements of 47
5 U.S.C. § 251(c). The 1996 Act continues this exemption until the
6 relevant state commission finds, inter alia, that a request of a rural
7 telephone company for interconnection, unbundling, or resale
8 would not be unduly economically burdensome, would be
9 technically feasible, and would be consistent with section 254.
10 Moreover, while a state commission must designate other eligible
11 carriers for non-rural areas, states may designate additional eligible
12 carriers for areas served by a rural telephone company only upon a
13 specific finding that such a designation is in the public interest.
14

15 *Joint Board Recommendations*, ¶ 173.

16 The third factor to be considered is whether any administrative burdens might result from
17 the redefinition of the service area. A rural telephone company's universal service
18 support payments are currently based on a rural company's embedded costs determined at
19 the study area level. *Universal Service Order*, ¶ 189. The Joint Board initially expressed
20 concern that rural telephone companies might have difficulty calculating costs on a less-
21 than-study area level. The Joint Board stated:

22 Another reason to retain existing study areas is that it is consistent
23 with our recommendation that the determination of the costs of
24 providing universal service by a rural telephone company should
25 be based, at least initially, on the Company's embedded costs.
26 Rural telephone companies currently determine such costs at the
27 study area level. We conclude, therefore, that it is reasonable to
28 adopt the current study areas as the service areas for rural
29 telephone companies rather than impose the administrative burden
30 of requiring rural telephone companies to determine embedded
31 costs on a basis other than study areas.
32

33 *Joint Board Recommendations*, ¶ 174.

1 Despite its initial decision to adopt the study area as the rural telephone companies'
2 service area, the FCC has now stated a policy favoring redefinition in instances where a
3 rural carrier's study area is large and/or non-contiguous. In response to issues raised by
4 competitive ETCs and wireless carriers who might not be able to provide facilities-based
5 service throughout a rural company's entire study area, the FCC has expressly urged State
6 commissions to explore redefinition for purposes of ETC designations. The FCC
7 cautioned that requiring a new entrant to serve a non-contiguous service area as a
8 prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for
9 wireless carriers" and would be "particularly harmful to competition in rural areas, where
10 wireless carriers could potentially offer service at much lower costs than traditional
11 wireline service." *Universal Service Order*, ¶ 190.

12 **Q: IN LIGHT OF THE JOINT BOARD'S RECOMMENDATIONS, SHOULD THE COMMISSION**
13 **GRANT NEXTEL PARTNERS' REQUEST FOR REDEFINITION OF CITIZENS' STUDY AREA?**

14 A: Yes. The study area of Citizens contains multiple exchanges which are not located
15 within the scope of Nextel Partners' authorized service areas. The most logical and
16 appropriate method of redefining this service area is by individual exchanges.
17 Redefining this service area into separate service areas based on individual exchanges for
18 purposes of ETC designations will promote competition by eliminating a barrier to entry
19 into the universal services market. This approach also would enable Nextel Partners to
20 be designated a federal ETC in the exchanges within network coverage area consistent
21 with the public interest determination of the Commission.

1 The Commission can proceed to redefine the service areas on an exchange basis while
2 appropriately taking into account the three factors noted by the Joint Board and adopted
3 by the FCC, none of which weigh against redefining Citizens' study area.

4 1. The first factor relating to a risk of cream-skimming is not present. Nextel
5 Partners Wireless seeks redefinition of Citizens' service area on an individual exchange
6 basis so it can be designated as an ETC in those areas for which it can provide facilities-
7 based services. Redefinition on an individual exchange basis will preserve and advance
8 universal service by establishing designated service areas that are more reflective of the
9 areas actually served. Redefinition furthers competition and protects the incumbents
10 from selective targeting of specific exchanges with the lowest cost and highest support.
11 In fact, Citizens has already disaggregated its support to the exchange level. The Citizens
12 disaggregation map on file with the Universal Service Administrative Company is
13 attached as **Exhibit 107**. *See In the Matter of Federal State Joint Board on Universal*
14 *Service*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-3181, ¶ 39 (rel.
15 Nov. 27, 2002) (finding that the risk of cream-skimming is "substantially minimized by
16 the fact that several of the affected rural telephone companies in this proceeding have
17 filed disaggregation and targeting plans at the wire center level"). Thus, Nextel Partners
18 will simply receive the same level of support per each line that Citizens now receives.
19 *See Application of United States Cellular Corporation for Designation as an Eligible*
20 *Telecommunications Carrier in Wisconsin*, PSC Docket No. 8225-TI-102, Order
21 Granting ETC Status, p. 10-11 (Dec. 20, 2002) ("*U.S. Cellular Wisconsin Order*")
22 (finding that because a competitive ETC receives the same amount of federal support as

1 the ILEC, "the concerns about 'cherry picking' and 'cream skimming' are largely moot")
2 (citing *In the Matter of Reconsideration of Western Wireless Corporation's Designation*
3 *as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 ¶ 12
4 (rel. Oct. 16, 2001)). In short, there will be no opportunity for cream-skimming.

5 2. The second factor relating to the special status of rural LECs can also
6 appropriately be taken into account by redefining on an exchange basis. The redefinition
7 of the Citizens' service area on an individual exchange basis will not compromise or
8 impair the unique treatment of Citizens as a rural telephone company under Section
9 251(f) of the Act. Consequently, Citizens will still retain the statutory exemptions from
10 interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if its
11 service area is redefined for purposes of ETC designations.

12 The Act's public interest factor for the designation of an additional ETC in the service
13 areas of Citizens under 47 U.S.C. § 214(e)(2) will remain in place. The continued
14 existence of the public interest standard was noted by the FCC as a safeguard available to
15 a State commission to support a redefinition request for service areas on a less-than-study
16 area level. *Universal Service Order*, ¶ 190. This public interest factor will remain as an
17 effective check to prevent the designation of an additional competitive ETC who may
18 seek to target only low cost areas or otherwise pose a detriment to the rural consumers of
19 the incumbents. Thus, the incumbent LECs would retain their unique status and special
20 treatment as rural telephone companies under the Act consistent with the Joint Board's
21 recommendations if its study area were redefined on an individual exchange basis.

1 3. The third and final Joint Board factor relating to the administrative ease of
2 calculating the costs of the rural telephone companies on a less-than-study area level is
3 likewise not an issue. There are no administrative costs to consider because any federal
4 universal service support available to a competitive ETC in an area served by one of the
5 rural telephone companies would be determined based on the per-line support available to
6 the rural telephone company itself. 47 C.F.R. § 54.307(a); *see also U.S. Cellular*
7 *Wisconsin Order*, p. 10 ("Currently, a competitive ETC gets the same amount of federal
8 high cost assistance per line as the ILEC."). Moreover, this current funding mechanism
9 will remain in place for approximately another four years, when the FCC is expected to
10 make changes to the funding mechanism for rural telephone companies.

11 **Q: WILL REDEFINITION OF CITIZENS' STUDY AREA TO AN EXCHANGE BASIS PROMOTE**
12 **UNIVERSAL SERVICE?**

13 Yes. The redefinition of Citizens service area is necessary for the promotion of universal
14 service because it will foster competition that otherwise does not exist. Unless the
15 service area is redefined, Nextel Partners is precluded from being designated as an ETC
16 in Citizens' exchanges because Nextel Partners cannot serve the entire study area.
17 Redefinition is in the public interest because it will enable Nextel Partners, and other
18 competitors, to bring new services and new technologies to Idaho customers currently
19 served by Citizens who now have no choice of universal service providers.

20 These large and non-contiguous study areas create a disincentive to competition. This
21 type of barrier to entry was appropriately recognized by the Washington Utilities and
22 Transportation Commission when it successfully applied to the FCC to redefine the study
23 areas of rural LECs in its State. The Washington Commission noted: "The designation

1 of the service area impacts the ease with which competition will come to rural areas
2 The wider the service area defined by the state commission, the more daunting the task
3 facing a potential competitor seeking to enter the market." *Petition for Agreement With*
4 *Designation of Rural Company Eligible Telecommunications Carrier Service Areas at*
5 *the Exchange Level and for Approval of the Use of Disaggregation of Study Areas for the*
6 *Purpose of Distributing Portable Federal Universal Service Support*, Washington Util. &
7 Transp. Comm'n, Docket No. 970380, at 3 (Aug. 1998). The Washington Commission
8 concluded that smaller service areas for the designation of ETCs in rural areas will
9 promote competition and speed deregulation. *Id.* at 9.

10 The FCC has previously determined that redefinition of rural telephone company service
11 areas to the exchange or wire center basis facilitates local competition by enabling new
12 providers to serve relatively small areas. *In the Matter of Petition for Agreement With*
13 *Designation of Rural Company Eligible Telecommunications Carrier Service Areas and*
14 *for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing*
15 *Portable Federal Universal Service Support*, Memorandum Opinion and Order, CC
16 Docket No. 96-45, DA 99-1844, ¶ 8 (rel. Sept. 9, 1999). The FCC noted: "We find that
17 our concurrence with rural LEC petitioners' request for designation of their individual
18 exchanges as service areas is warranted in order to promote competition." *Id.* The FCC
19 concluded that Washington's "effort to facilitate local competition justifies [the FCC's]
20 concurrence with the proposed service area designation." *Id.*

21 The redefinition of Citizens' study area to an individual exchange basis will foster
22 competition in Idaho. Redefining this study area for purposes of determining ETC

