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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
LAT COMMUNICATIONS, INC., d/b/a
NTCHIDAHO, INC. OR CLEAR TALK,
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER.

Case Nos. GNR-T-03-08
GNR-T-03-16

IN THE MATTER OF THE
APPLICATION OF NPCR, INC., d/b/a
NEXTEL PARTNERS, SEEKING
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER.

DIRECT TESTIMONY
OF
DANIEL L. TRAMPUSH
ON BEHALF OF
THE IDAHO TELEPHONE ASSOCIATION
AND
CITIZENS TELECOMMUNICATIONS COMPANY OF IDAHO

ORIGINAL

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Daniel L. Trampush and my business address is 900 Washington
3 Street, Suite 700, Vancouver, Washington, 98660.

4 **Q. PLEASE SUMMARIZE YOUR CURRENT EMPLOYMENT AND**
5 **EDUCATIONAL BACKGROUND.**

6 A. My current position is Director – Telecommunications Consulting for the firm of
7 Moss Adams LLP. Moss Adams is an accounting and business advisory firm that
8 has been in business for 90 years. The firm has 20 practice offices throughout the
9 west coast and is the tenth largest public accounting firm in the United States.

10 I graduated from Central Washington University in 1970 with a Bachelor
11 of Arts degree in Business Administration.

12 **Q. PLEASE DESCRIBE YOUR PRIOR BUSINESS EXPERIENCE.**

13 A. I have been actively involved in the telecommunications industry for the vast
14 majority of my thirty-three year professional career. Upon graduating from
15 college in 1970, I joined the firm of Ernst & Ernst (now Ernst & Young). I was
16 employed by the firm for twenty-seven years, the last seventeen of which I was a
17 partner. During my time at Ernst & Young, I worked on a variety of
18 telecommunications accounting and regulatory issues, some of which were
19 national in scope. I left the firm in 1997 and became Senior Vice President and
20 Chief Financial Officer of GST Telecommunications, Inc, a publicly traded
21 Competitive Local Exchange Carrier. My responsibilities at GST included
22 finance, accounting, and investor relations. My focus at Moss Adams is similar to
23 that at Ernst & Young. That is, I work in the firm's Telecom Niche practice

1 providing consulting services to rural telecommunications carriers. I am also
2 active in the Organization for the Protection and Advancement of Small
3 Telephone Companies (“OPASTCO”) subcommittees on Universal Service and
4 access charges. Additionally, we are engaged to work in conjunction with
5 counsel for the Idaho Telephone Association on federal and state regulatory
6 proceedings. A copy of my biography is attached as Exhibit 301.

7 **Q. WHO ARE YOU TESTIFYING FOR IN THIS PROCEEDING?**

8 A. I am appearing on behalf of the Idaho Telephone Association (“ITA”) and
9 Citizens Telecommunications Company of Idaho (“Citizens”). The ITA is an
10 industry organization comprised of telecommunications carriers that serve
11 approximately 40,000 access lines in the rural areas of Idaho.¹ All of the ITA’s
12 members are “rural telephone companies” as defined in 47 U.S.C. § 153(37).
13 Citizens is also a rural telephone company that provides telecommunications
14 service to approximately 21,000 access lines in 18 southern Idaho exchanges.

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. The purpose of my testimony is to analyze the Applications by NPCR, Inc
17 (“Nextel”) and IAT Communications (“Clear Talk”) for Eligible
18 Telecommunications Carrier (“ETC”) designations in a number of rural telephone
19 companies’ service territories. In doing so, I will comment on both the
20 Applications and the direct testimony submitted by the Applicants’ witnesses.

¹ ITA member companies include: Albion Telephone Company, Cambridge Telephone Company, Custer Telephone Cooperative, Inc., Farmers Mutual Telephone Company, Filer Mutual Telephone Company, Inland Telephone Company, Midvale Telephone Company, Mud Lake Telephone Cooperative Association, Project Mutual Telephone Cooperative Association, Direct Communications – Rockland, Rural Telephone Company, Silver Star Telephone Company, Oregon-Idaho Utilities, and Fremont Telecom.

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

2 A. My ultimate conclusion is that the Applicants have not made even a passable
3 attempt to meet their statutorily required burden of proof for ETC designations in
4 the rural telephone companies' service territories. In explaining this conclusion, I
5 will show that:

- 6 ▪ The Applicants repeatedly mischaracterize the plain meaning of the
7 Telecommunications Act of 1996 and the ultimate issues in this
8 proceeding.
- 9 ▪ The Applicants' own pleadings and testimony prove that for the
10 foreseeable future, they will not meet the minimum threshold requirement
11 for ETC designations in the affected incumbent local exchange carrier
12 ("ILEC") service territories.
- 13 ▪ Even if the Applicants could meet the threshold requirements for ETC
14 designations, their applications are not "in the public interest" and should
15 be denied.

16 **Q. PLEASE EXPLAIN HOW THE APPLICANTS MISCHARACTERIZE**
17 **THE 1996 ACT AND THE ISSUES IN THIS PROCEEDING?**

18 A. The Applicants' entire case is essentially built on the proposition that competition
19 is the "be all and end all" of the Act. According to the Applicants, the goal of
20 promoting competition trumps all other public interest policies embodied in the
21 Act. While I am not an attorney, I have spent the better part of my working life
22 dealing with telecommunications issues, including the 1996 Act, and I think I am

1 competent to understand plain English. In my opinion the Applicants are grossly
2 mischaracterizing a complicated law that serves a number of purposes.

3 The Applicants mischaracterize the issues in this proceeding by insisting
4 that the ultimate issue in this case is whether there should be wireless competition
5 in the rural telephone companies' exchanges. This is not the issue at all. As I will
6 explain in detail later in my testimony, there is no shortage of wireless
7 competitors already operating in Idaho's rural telephone company service areas.
8 The real question in this case is whether the Applicants' competitive efforts in
9 these areas should be subsidized by payments from the federal Universal Service
10 Fund ("USF").

11 **Q. LET'S RETURN TO THE 1996 ACT. ARE YOU SUGGESTING THAT**
12 **THE ACT IS NOT PROCOMPETITION?**

13 A. Not at all. The 1996 Act was obviously designed in part to promote, as the title of
14 Part II states, the "development of competitive markets" in the majority of the
15 nation's telecommunications markets. But the Act has a number of other equally
16 important purposes as well, not the least of which are the preservation and
17 enhancement of universal service and the protection of incumbent rural telephone
18 companies from unfair competition.

19 **Q. HOW DOES THE 1996 ACT DEFINE UNIVERSAL SERVICE?**

20 A. Section 254(b) of the Act contains six major universal service principles:

- 21 1. Quality services should be available at just, reasonable, and affordable
22 rates.

- 1 2. Access to advanced services should be provided in all regions of the
2 nation.
- 3 3. Consumers in all regions of the nation should have access to services
4 (including advanced services) and rates that are reasonably comparable to
5 those in urban areas.
- 6 4. All telecommunications providers should make an equitable and
7 nondiscriminatory contribution to the preservation and advancement of
8 universal service.
- 9 5. There should be specific, predictable and sufficient Federal and State
10 mechanisms to preserve and advance universal service.
- 11 6. Schools and libraries should have access to advanced services.

12 In addition to the principles listed above, the FCC approved, based on a
13 Joint Board recommendation, an additional principle of “competitive neutrality”.
14 This principle requires that “universal service support mechanisms and rules
15 neither unfairly favor nor disfavor one technology over another.”²

16 It is worth noting that none of these universal service principles refer to
17 the promotion of competition, nor do they guarantee customers a right to multiple,
18 competing universal service providers.

19 **Q. WHAT DO YOU MEAN BY “UNFAIR” COMPETITION?**

20 A. The 1996 Act was a comprehensive reworking of the Communications Act of
21 1934. As such, it generated huge interest and massive lobbying efforts by
22 virtually every segment of the telecommunications industry, in addition to
23 consumer groups and other interested parties. After a long deliberative process,

² *Report and Order* in CC Docket No. 96-45, issued May 8, 1997 at ¶47.

1 Congress ultimately reached the compromise embodied in the Act, in which most
2 of the industry groups got some of what they wanted, but not all.

3 The rural incumbent local exchange carriers (“ILECs”) also participated in
4 this legislative process, primarily through trade groups such as OPASTCO. Many
5 of these companies, including many of those I am representing today, were then
6 (and remain now) subject to the traditional state public utility regulation process
7 that carries with it an obligation to serve as a carrier of last resort (“COLR”)
8 within their service territories. This COLR obligation means that incumbent rural
9 telephone companies are not free to differentiate between profitable and
10 unprofitable customers. They are compelled to serve one and all at regulated rates
11 based on average costs.

12 Furthermore, because of their low population density service territories,
13 the rural ILECs generally have high average service costs and often require
14 support from federal and state universal service funds (“USF”) to keep rates
15 affordable and meet the universal service goals embodied in the federal Act and
16 state legislation. But within their generally high cost service areas, most rural
17 ILECs have some pockets of customers (primarily small towns, individual
18 businesses, and government offices) that comprise their lowest cost and most
19 profitable customers.

20 Thus, the rural ILECs argued that it would be unfair to allow unregulated
21 competitors to target only their most profitable customers, while leaving the
22 incumbents with the COLR obligation for the very highest cost customers. The
23 rural ILECs pointed out that allowing this type of “cherry picking” or “cream

1 skimming “ competition would not only jeopardize the incumbents’ financial
2 viability, but would also provide an undeserved windfall to competitive ETCs and
3 prove detrimental to universal service goals by causing increased rates for their
4 remaining high cost customers and increased demands on federal and state USFs.

5 **Q. DO THESE SAME CONSIDERATIONS APPLY TO RURAL**
6 **TELEPHONE COMPANIES IN IDAHO?**

7 A. Yes, in spades. In preparation for an earlier proceeding, the ITA surveyed its
8 members to compile basic information about the members’ service densities and
9 costs. Of the 15 study areas represented by ITA’s 14 member companies, the ITA
10 collected information on 12 study areas. This response accounts for
11 approximately 98 percent of the ITA membership’s total access lines.³ The ITA
12 data presented in these comments is based on this survey.

13 We found that, on average, the ITA companies have only 2 access lines
14 per square mile of service territory. This contrasts with the findings of the Rural
15 Task Force, which determined that, on average, rural carriers serve 19 lines per
16 square mile.⁴ Four of the ITA study areas have a line density per square mile of
17 less than 1 and three study areas have a density of between 1 and 2 lines per
18 square mile. On the other end of the spectrum, one member with a comparatively
19 small service territory has more than 100 access lines per square mile.

20 The lack of access line density and the necessity of providing ubiquitous
21 coverage in these rural areas translates into high costs. At the end of 2002, the
22 gross investment in telephone plant in service per access line for the ITA

³ Three member companies with combined access lines of approximately 1,000 were unable to respond to the data request in the time allowed.

⁴ Rural Task Force, White Paper 2, *The Rural Difference*, January 2000, P. 33.

1 members was approximately \$5,400. Plant specific operating expenses were \$445
2 per line for this same period, or \$37 per line per month.

3 **Q. CAN YOU PROVIDE SIMILAR NUMBERS FOR CITIZENS' SERVICE**
4 **AREA?**

5 **A.** Yes. The density of Citizens Idaho service area is also far below the national
6 average for rural telephone companies. Citizens averages 3.96 customers per
7 square mile. If we blend the Citizens data with the ITA's, average density would
8 equal 2.4 access lines per square mile.

9 Citizens also exhibits relatively high plant costs, with gross plant in
10 service per access line of \$4,213, with plant specific operating expenses of \$144
11 per year.

12 **Q. WHAT DO THESE DENSITY AND COST FIGURES TELL US ABOUT**
13 **COMPETITION IN RURAL TELEPHONE COMPANY SERVICE**
14 **AREAS?**

15 **A.** With these types of average densities and costs, it is readily apparent that wireless
16 competitors who concentrate primarily on towns or businesses, without serving
17 the surrounding sparsely populated areas, have a potentially enormous
18 competitive advantage *vis a vis* the incumbent who must serve the entirety of its
19 study area.

20 **Q. DOES THIS POTENTIAL ADVANTAGE MEAN THAT WIRELESS**
21 **COMPETITION SHOULD BE PROHIBITED IN RURAL TELEPHONE**
22 **COMPANY SERVICE AREAS?**

1 A. No. In the end, the rural telephone companies did not get the full measure of
2 protection they requested when the Act was passed. Congress expressly
3 authorized wireless competition in rural telephone company service areas, and it
4 refused to prohibit wireless carriers from “cherry picking” the most attractive
5 customers or geographic portion of the incumbent rural telephone company’s
6 service area. But Congress did establish some important constraints on subsidized
7 competition by wireless carriers.

8 **Q. WHAT ARE THOSE CONSTRAINTS?**

9 A. The first is that a rural telephone company competitor that seeks USF subsidies
10 must in fact provide ubiquitous service throughout the entirety of the incumbent’s
11 service area. The second is that the state commission must explicitly find that a
12 competitor’s eligible telecommunications carrier (“ETC”) status, and entitlement
13 to USF support, is in the “public interest.”

14 **Q. WHAT IS THE STATUTORY SOURCE OF THE FIRST CONSTRAINT**
15 **YOU HAVE JUST DESCRIBED?**

16 A. The relevant provision of the Act is Section 214(e)(1), which provides that an
17 applicant for ETC status,

18 shall, throughout the service area for which such designation is
19 received—

- 20 (A) offer the services that are supported by Federal
21 universal support mechanisms under section 254 . . . ; and
22 (B) advertise the availability of such services and the
23 charges therefore using media of general distribution.
24

25 47 U.S.C. § 214(e)(1). Section 214(e)(5) further provides:

26 In the case of an area served by a rural telephone company “service
27 area” means such company’s “study area” unless and until the
28 Commission and the States after taking into account

1 recommendations of a Federal-State Joint Board instituted under
2 section 410(c), establish a different definition of service area for
3 such company.
4

5 **Q. WHAT IS THE SIGNIFICANCE OF THESE PROVISIONS?**

6 A. Congress essentially offered wireless carriers a choice when they enter a rural
7 telephone company's service area. They are free to skim the cream of the
8 incumbent's customers, but if they do so they must forgo USF support.

9 Alternatively, the competitor can attempt to qualify for USF subsidies equivalent
10 to the incumbent's. If the competitor chooses the latter alternative it must, as a
11 minimum threshold requirement, match the incumbent's obligation to serve and
12 actively solicit customers throughout the entirety of a rural ILEC's territory. This
13 requirement is mandatory and non-discretionary, unless the Joint Board
14 recommends, and the FCC and states adopt, some lesser requirement.

15 **Q. HAS THE JOINT BOARD IN FACT RECOMMENDED A LESSER**
16 **STANDARD THAN THE UBIQUITOUS SERVICE REQUIREMENT?**

17 A. No. In its Recommended Decision regarding the implementation of the universal
18 service principles of the 1996 Act, the Joint Board stated that:

19 We find no persuasive rationale in the record for adopting, at this
20 time, a service area that differs from a rural telephone company's
21 present study area. We note that some commenters argue that
22 Congress presumptively retained study areas as the service area for
23 rural telephone companies in order to minimize "cream skimming"
24 by potential competitors. Potential "cream skimming" is
25 minimized because competitors, as a condition of eligibility, must
26 provide services throughout the rural telephone company's study
27 area. Competitors would thus not be eligible for universal service
28 support if they sought to serve only the lowest cost portions of a
29 rural telephone company's study area.⁵
30

⁵ *Joint Board Recommended Decision*, (November 8, 1996), FCC 96J-3 at ¶172.

1 **Q. DOES A COMPETITIVE ETC HAVE TO OFFER SERVICE TO ALL**
2 **CUSTOMERS THROUGHOUT THE INCUMBENT RTC'S TERRITORY**
3 **BEFORE IT IS GRANTED ETC STATUS?**

4 A. No. Clear Talk's witness, Mr. Ishihara correctly points out that the FCC has held
5 that a competitive ETC must be granted the same opportunity to build out its
6 facilities that the incumbent LEC received when it was first certificated to provide
7 service. But this is only half the story, and Mr. Ishihara conveniently omits the
8 conditions the FCC attached to this ruling. Following the passage cited by Mr.
9 Ishihara, the FCC went on to hold that a competitive ETC applicant must make a
10 reasonable demonstration to the state Commission of its "capability and
11 commitment" to provide service throughout the proposed ETC serving area. The
12 FCC stressed that this must be a meaningful demonstration:

13 We caution that a demonstration of the capability and commitment
14 to provide service must encompass something more than a vague
15 assertion of intent on the part of a carrier to provide service. The
16 carrier must reasonably demonstrate to the state Commission its
17 ability and willingness to provide service upon designation.⁶
18

19 I assume the FCC's words were not chosen haphazardly. The FCC's analogy to
20 the showing required of the incumbent when it was originally certificated, and its
21 insistence that the applicant has the burden of proving "its ability and willingness"
22 are significant. I interpret the FCC's ruling as requiring a showing by a
23 competitive ETC that it is "fit, willing, and able" to provide ubiquitous service on
24 reasonable terms and within a reasonable time.

25 **Q. WHAT TYPE OF SHOWING SHOULD BE REQUIRED TO MEET THIS**
26 **TEST?**

⁶ *Declaratory Ruling*, released August 10, 2000, FCC 00-248 at ¶24.

1 A. At a minimum, I believe the Commission should insist on convincing proof that
2 the applicant has a clear business plan and timetable for the required build out, the
3 financial capacity to carry out that plan, and (in the case of wireless carriers)
4 adequate spectrum to meet future customer growth requirements. Furthermore, in
5 the case of companies that have an operating history in other jurisdictions, they
6 should be required to show that they have followed through on their ETC
7 commitments in those jurisdictions.

8 **Q CAN EITHER OF THE APPLICANTS MEET THIS THRESHOLD**
9 **STATUTORY REQUIREMENT?**

10 A. No. But the reasons why differ between the two Applicants, so I will discuss each
11 separately.

12 **Q. LET'S START WITH CLEAR TALK. WHY DOES IT FAIL TO**
13 **QUALIFY FOR ETC STATUS UNDER THE UBIQUITOUS SERVICE**
14 **REQUIREMENT?**

15 A. In his testimony on behalf of Clear Talk's Application in this case, Mr. Larry
16 Curry describes the scope of Clear Talk's Application as follows:

17 At this time, Clear Talk seeks designation as an ETC in certain
18 exchange areas and/or wire centers (as set forth in Exhibit A) that
19 fall within the boundaries of Clear Talk's FCC licenses.
20

21 Direct Testimony of Larry Curry, P. 12, L. 14-16.

22 I have reproduced Mr. Curry's Exhibit A⁷ as my Exhibit No. 302. As the
23 Exhibit shows, Clear Talk is requesting an ETC designation in the service areas of
24 three rural telephone companies—Citizens, Fremont Telecom ("Fremont"), and

⁷ Mr. Curry's Exhibit A is actually labeled "Exhibit 1".

1 Project Mutual Telephone Cooperative (“Project Mutual”).⁸ But Clear Talk’s
2 request is not coterminous with the rural telephone companies’ study areas in any
3 of these cases. In the case of Citizens, Clear Talk is requesting designation in
4 Aberdeen only. This is only one of Citizens’ 18 exchanges in its study area. In
5 Fremont’s case, Clear Talk requests designation in Fremont’s Ashton, St.
6 Anthony, and Chester wire centers, thus omitting Fremont’s Island Park
7 exchange. Finally, with regard to Project Mutual, Clear Talk omits the Oakley
8 exchange from its request.

9 In short, Clear Talk is asking the Commission to do something that is
10 absolutely prohibited by law by requesting an ETC designation for less than the
11 entirety of the affected rural telephone company service areas. To make matters
12 worse, Clear Talk acknowledges that it cannot even serve the entirety of all the
13 exchanges listed in Exhibit A, and it is therefore requesting an ETC designation
14 for “any partial wirecenters.” Since these partial wirecenters are not identified,
15 Clear Talk’s Application is not only contrary to law, but it leaves the Commission
16 in the extraordinary position of considering a request for an ETC designation
17 whose geographic boundaries are unknown.

18 **Q. CAN CLEAR TALK SOMEHOW CURE THIS PROBLEM BY LATER**
19 **EXPANDING ITS OWN SERVICE AREA?**

20 A. No. I read Mr. Clear Talk’s testimony as saying that its requested ETC area is
21 coterminous with its FCC license. If this is so, it presumably does not have either
22 legal authority or spectrum capacity to expand beyond the requested geographic
23 area.

⁸ Clear Talk has apparently abandoned its request in its Petition to include ATC and Fremont Telecom.

1 **Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT CLEAR TALK'S**
2 **ABILITY TO MEET ITS ETC OBLIGATIONS?**

3 A. Yes. As of the date this testimony is being prepared, Clear Talk still has not
4 provided the ITA with the promised response to its request for basic financial
5 information, including a balance sheet and income statement. This makes me
6 very suspicious about its financial ability to perform even if it had the legal ability
7 to do so. That suspicion is compounded by the knowledge that Leap Wireless,
8 which owns 30% of Clear Talk is now in bankruptcy.⁹

9 **Q. PLEASE SUMMARIZE YOUR FINDINGS WITH REGARD TO CLEAR**
10 **TALK'S ABILITY TO MEET WHAT YOU HAVE CHARACTERIZED AS**
11 **THE THRESHOLD REQUIREMENT FOR ETC DESIGNATION?**

12 A. Clear Talk does not even make a defensible attempt to meet the threshold legal
13 requirement. It simply ignores the requirement that it must serve the whole of the
14 incumbent rural telephone companies' service areas, and instead requests that the
15 Commission grant it ETC status for its own service territory. The Commission
16 simply has no legal authority to grant this request.

17 **Q. LET'S TURN OUR ATTENTION TO NEXTEL. DOES NEXTEL MEET**
18 **THE THRESHOLD REQUIREMENT FOR ETC STATUS?**

19 A. Nextel's case is both more complicated and more interesting than Clear Talk's,
20 but in the end my conclusions are the same. Nextel is a large, profitable publicly
21 traded company, and it therefore probably has the financial capability to provide
22 ubiquitous service if it chooses to do so. The problem is with Nextel's

⁹ Clear Talk's financial information reached ITA's counsel late in the afternoon of October 14th, too late for analysis in ITA's testimony due the following day.

1 “willingness” to meet its obligations under the Act. Ordinarily, proof about a
2 party’s intentions is difficult to establish. But in this case there is strong evidence
3 that, despite the thin promises to the contrary in its testimony, Nextel has no
4 intention of providing ubiquitous universal service throughout the rural telephone
5 company service areas for which its seeks an ETC designation.

6 **Q. BEFORE WE FOLLOW UP ON THE ALLEGATION CONTAINED IN**
7 **THE LAST SENTENCE IN YOUR PREVIOUS ANSWER, WOULD YOU**
8 **PLEASE EXPLAIN WHY THE NEXTEL CASE MORE COMPLICATED**
9 **THAN CLEAR TALK’S?**

10 A. In the first place, Nextel has filed on more rural telephone company service areas.
11 Like Clear Talk, it has filed on a portion of Citizens’ service area and all of
12 Project Mutual’s service area. But in addition it has also filed on the service areas
13 of Albion Telephone Company (“Albion”), Filer Mutual Telephone Cooperative
14 (“Filer Mutual”), Farmers Mutual Telephone Cooperative (“Farmers Mutual”),
15 and Mud Lake Telephone Cooperative (“Mud Lake”). Each of these filings
16 presents slightly different circumstances.

17 **Q. PLEASE START BY DESCRIBING THE SITUATION WITH RESPECT**
18 **TO THE APPLICATION CONCERNING CITIZENS’ SERVICE AREA.**

19 A. Mr. Lance Tade will describe the filing in Citizens’ service area in some detail,
20 and I will not attempt to duplicate his description here. In brief, Nextel has filed
21 on approximately two-thirds of Citizens’ Idaho exchanges. Not surprisingly,
22 these are generally Citizens’ most heavily populated and lowest cost exchanges.

23 **Q. HOW DOES NEXTEL JUSTIFY THIS TARGETING?**

1 A. Nextel really offers no justification at all, other than the fact that this is the
2 customer base it would like to serve, and the tired refrain that this will somehow
3 promote competition. Nextel is simply asking the Commission to disaggregate
4 Citizens' service area so it can receive USF support but avoid serving territory it
5 obviously views as unprofitable. This area it will happily leave to Citizens.

6 **Q. IS THIS REQUEST CONSISTENT WITH THE STATUTORY**
7 **MANDATES YOU DESCRIBED ABOVE?**

8 A. No. In short, this is precisely the type of preferential targeting of a select portion
9 of a rural telephone company's customers that the threshold requirement is
10 designed to prevent. Allowing this sort of phony competition would be a breach
11 of faith with the rural telephone companies who justifiably believed that
12 subsidization of this type of cherry picking would never be allowed under the Act.

13 **Q. PLEASE DESCRIBE THE SITUATION REGARDING THE OTHER**
14 **RTCS AFFECTED BY NEXTEL'S APPLICATION.**

15 A. The circumstances vary. In the case of Farmers Mutual and Project Mutual,
16 Nextel arguably has the ability to provide service in all, or virtually all, of the
17 incumbents' service area, if one accepts Nextel's propagation map at face value.
18 The same cannot be said of the Albion, Filer and Mud Lake service territories. In
19 those companies' areas, Nextel would have to build out to meet its ubiquitous
20 service requirement.

21 **Q. HAS NEXTEL PROVIDED ANYTHING MORE THAN "A VAGUE**
22 **ASSERTION OF INTENT" REGARDING THIS BUILD OUT**
23 **REQUIREMENT?**

1 A. On the contrary, it has admitted it has no specific plans to do so. The ITA's
2 Discovery Request No. 24 asked Nextel to, "Please provide details of Nextel's
3 specific plans to extend its network in each of the requested Designated Areas."
4 To which Nextel replied, "Nextel Partners will meet its obligation as an ETC to
5 expand its network, over time, to meet reasonable requests for service. Nextel
6 offers no specific plans for consideration in this case." (Emphasis added.)

7 Similarly, ITA Request No. 28 asked Nextel to, "Please describe the
8 analysis that will be undertaken when a customer requests service in an area not
9 currently served by Nextel, but within the requested Designated Area." Nextel
10 responded by stating that, "Nextel Partners cannot state at this time what that
11 analysis would be."

12 **Q. HOW DO YOU INTERPRET THESE RESPONSES?**

13 A. I am convinced Nextel is not serious about meeting its build out obligation.

14 **Q. IS THIS WHY YOU PREVIOUSLY EXPRESSED DOUBTS ABOUT**
15 **NEXTEL'S WILLINGNESS TO PROVIDE UBIQUITOUS UNIVERSAL**
16 **SERVICE THROUGHOUT THE INCUMBENT RTCS' EXCHANGES?**

17 A. It is one reason, but not the major one. My primary reason for concluding that
18 Nextel is not willing to provide ubiquitous service is that its own business
19 objectives concede as much. Nextel's business strategy is to target the very
20 highest margin customers while largely ignoring the general populace of potential
21 subscribers. This strategy is readily documented in the company's public filings,
22 and is well known to the investment community. As Value Line recently stated,
23 "The Company is best known for serving businesses and government entities,

1 which account for over 70% of the subscriber base.” (A copy of the Value Line
2 article is attached as Exhibit No. 303.

3 Morningstar, an equally well-respected independent stock research firm,
4 summarized the company’s strategy in somewhat more colorful terms:

5 Unlike rivals obsessed with subscriber growth, Nextel doesn’t
6 wave a cell phone at every Tom, Dick, and Harry. Instead, it
7 skims the cream of the crop; lucrative business customers who tend
8 to be heavy cell phone users and who are more concerned with
9 quality and features than price.

10
11 (Emphasis added.) The full text of the Morningstar article is attached as Exhibit
12 No. 304.

13 **Q. DO YOU HAVE ANY EVIDENCE THAT NEXTEL IS IN FACT**
14 **PURSUING THIS CREAM SKIMMING STRATEGY IN IDAHO?**

15 A. Yes. In the ITA survey of its member companies that I previously described in
16 this testimony, we asked the companies to break their access lines down into four
17 categories: residential, single line businesses, multi line businesses, and special
18 access. In the course of preparing this testimony, I requested similar information
19 from Citizens. The results appear in the following table:

ITA	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>% of Total</u>
Residential	30,582	30,472	30,373	76.9%
Business - Single-Line	4,715	5,040	4,537	11.5%
Business - Multi-Line	3,745	3,631	3,991	10.1%
Special Access	576	604	591	1.5%
Total Access Lines	39,618	39,747	39,492	100.0%

CTC-Idaho	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>% of Total</u>
Residential	16,845	16,908	16,752	79.1%
Business - Single-Line	3,557	3,280	3,341	15.8%
Business - Multi-Line	978	1,138	1,083	5.1%
Special Access	0	0	0	0.0%
Total Access Lines	21,380	21,326	21,176	100.0%

ITA + CTC-Idaho	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>% of Total</u>
Residential	47,427	47,380	47,125	77.7%
Business - Single-Line	8,272	8,320	7,878	13.0%
Business - Multi-Line	4,723	4,769	5,074	8.4%
Special Access	576	604	591	1.0%
Total Access Lines	60,998	61,073	60,668	100.0%

1 As you can see, residential customers comprised approximately 79% of the rural
2 telephone companies' access lines. Single line businesses and multi line
3 businesses comprised 13% and 5%, respectively.

4 Comparing these figures with Nextel's line counts is very instructive. In
5 its Discovery Request No. 1, the ITA asked Nextel for its line counts in each of
6 affected incumbents' service territories. Two of the service areas had so few
7 customers that the results are perhaps not statistically significant. In the
8 remaining service areas, Nextel broke out its line counts as follows:

	Multi-line Business	Single-line Business & Residential
Citizens	390	239
Project Mutual	105	92
Filer Mutual	31	39
Mud Lake	65	111

9 **Q. WHAT CONCLUSIONS DO YOU DRAW FROM THIS INFORMATION?**

10 A. My first conclusion is that Nextel is following, and presumably will continue to
11 follow, its cream skimming strategy in Idaho. In the two areas where it has the
12 highest penetration levels, multi-line business customers account for more than
13 half of its total access lines, and in all the rural telephone companies' territories
14 Nextel's percentage of business lines is several times the rural incumbent
15 averages. In fact, Nextel doesn't even have a separate category for residential
16 customers. They are lumped in with single-line businesses, presumably because

1 the number of residential customers is not large enough (or of sufficient interest to
2 the company) to justify tracking them separately.

3 My further conclusion is that the service Nextel offers has nothing
4 whatsoever to do with universal service as that term is commonly understood. In
5 fact, it is its antithesis. Nextel is engaged in exactly the type of cream skimming
6 that threatens universal service, rather than strengthening it. There is no earthly
7 reason to subsidize this service with universal service funds.

8 **Q. PLEASE SUMMARIZE THIS PORTION OF YOUR TESTIMONY.**

9 A. Neither Clear Talk nor Nextel meet the fundamental threshold test for ETC
10 eligibility. Clear Talk can't serve the entirety of the rural telephone companies'
11 service areas, and Nextel won't. In fact, both simply ignore the statutory
12 requirement to do so, and in effect ask the Commission to redefine their ETC
13 service areas as the areas they have chosen to serve, without reference to the
14 incumbents' service areas. This is contrary to both the spirit and the letter of the
15 law, and their applications must therefore be rejected.

16 **Q. ASSUME FOR THE SAKE OF ARGUMENT THAT THE COMMISSION**
17 **SOMEHOW FINDS THAT THE THRESHOLD REQUIREMENT HAS**
18 **BEEN MET. SHOULD THE APPLICATIONS THEN BE GRANTED?**

19 A. No. The ubiquitous service requirement is only the first of two tests that must be
20 satisfied before a competitor can be granted ETC status in a rural telephone
21 company's service area.

22 **Q. WHAT IS THE SECOND TEST?**

23 A. Section 214(e)(2) states:

1 [T]he State commission may, in the case of an area served by a
2 rural telephone company, and shall, in the case of all other areas,
3 designate more than one common carrier as an eligible
4 telecommunications carrier. . . Before designating an additional
5 eligible telecommunications carrier for an area served by a rural
6 telephone company, the State commission shall find that the
7 designation is in the public interest.
8

9 (Emphasis added). Again, this statutory requirement is clearly mandatory and
10 non-discretionary.

11 **Q. HOW DO THE APPLICANTS PROPOSE TO MEET THIS PUBLIC**
12 **INTEREST TEST?**

13 A. The Applicants' witnesses uniformly argue that the theoretical or presumed
14 benefits of their competition with the incumbent wireline carriers is sufficient to
15 satisfy the public interest test. Representative samples of this line of argument
16 include the following:

17 Designating Clear Talk as an ETC in Idaho will bring competition
18 to rural, high cost areas, and competition is in the public interest . .
19 . The failure to designate Clear Talk as an ETC would deprive
20 consumers of the benefits of competition, including increased
21 choices, higher quality service, and lower rates. Glenn Ishihara, P.
22 23, L-6-7 17-19.
23

24 Consistent with the Act, the "public interest" is served where
25 designating a competitive ETC will benefit consumers in rural
26 areas of the state. The Commission should make this
27 determination from the presumption that competition benefits
28 consumers, and that citizens throughout the state are entitled to the
29 benefits of competitive universal service. Scott Peabody, P. 23, L.
30 12-17.
31

32 Put directly, the purpose of this proceeding is *not*, as many rural
33 LECs argue, to answer the question "Is the introduction of
34 competition for basic telecommunications services in rural areas in
35 the public interest?" That question has been answered and the
36 policy direction has been set on a federal level by both Congress
37 and the FCC. Don Wood, P. 4, L. 11-15.
38

1 **Q. DO YOU AGREE WITH THESE ARGUMENTS?**

2 A. No. They would be correct if were considering a non-rural ILEC's service area.
3 But they are manifestly wrong as a statement of law and Congressional intent
4 when applied to a rural telephone company's territory. If the presumptive
5 benefits of competition were sufficient to satisfy the public interest test, the public
6 interest test would be a *non sequiter* because Congress would have had no reason
7 to include it in the law. It would have made multiple ETC designations
8 mandatory, as it did in RBOC service areas, on the grounds that competition is
9 always in the public interest.¹⁰

10 But that is not what Congress did. Instead it made multiple ETC
11 designations permissive in rural telephone company service areas and further
12 provided that these designations must first be determined to be "in the public
13 interest." Thus, the only logical reading of the statute is that a company seeking
14 ETC status in a rural telephone company service area must show some public
15 interest benefit beyond the presumptive benefits of competition.

16 **Q. HAVE THE APPLICANTS IN FACT INTRODUCED EVIDENCE OF**
17 **ANYTHING OTHER THAN THE PRESUMED BENEFITS OF**
18 **COMPETITION.**

19 A. No, and they effectively admit as much in their testimony and discovery
20 responses.

¹⁰ "It appears that, in finding that CETCs should be designated in rural ILECs' territories, the Commission and some states have found the mere encouragement of competition sufficient under the law to meet the public interest test. If that were sufficient, Congress would not have needed to establish the public interest test; the Commission and the states would simply have been directed to authorize multiple ETCs in all ILECs' territories, rural or not." NASUCA Comments, P. 9, CC Docket No. 96-45.

