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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

Case No. GNR-T-03-8

Case No. GNR-T-03-16

REBUTTAL 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. I provide engineering services for Nextel Partners, Inc. and its
6 affiliates and indirectly wholly owned subsidiaries, including the Applicant NPCR, Inc.
7 (collectively, "Nextel Partners" or the "Company"). My business address is 4500
8 Carillon Point, Kirkland, WA 98033.

9 **Q: WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?**

10 A: I am responding to direct testimony filed by Lance A. Tade on behalf of Citizens
11 Telecommunications Company of Idaho ("Citizens"), and direct testimony by Daniel L.
12 Trampush on behalf of Citizens and the Idaho Telephone Association ("ITA"). Citizens
13 and ITA are collectively referred to as "Intervenors."

14 **Q: WHAT IS YOUR REACTION TO INTERVENORS' TESTIMONY?**

15 Both Mr. Tade and Mr. Trampush oppose our designation based on policy arguments that
16 have little to do with the criteria for ETC designation. As I understand the "public
17 interest" standard as applied by the FCC, opposing ILECs should be required to identify
18 compelling reasons to treat rural telephone company areas different from non-rural
19 telephone company areas. I see no evidence that these areas are unable to support
20 competitive universal service, and no reason to deny high cost areas that which is
21 available in urban areas. I see Intervenors as having one goal – to be the only federally-
22 funded provider in their service areas, forever. Any other result they claim is bad policy
23 and will put them at an unfair disadvantage. I work for a competitive company that is
24 guaranteed nothing – we need to work hard every day to win and keep customers, and

1 will make a profit only if we do so successfully. It astonishes me to hear ILECs claim to
2 be disadvantaged when:

- 3 • They have built monopoly networks while being essentially guaranteed a
4 profit.
- 5 • They currently have a captive customer base and no real competition.
- 6 • They receive extraordinary amounts of money from federal universal
7 service funds based on embedded costs, and are guaranteed those funds for
8 at least 2 more years.
- 9 • They have regulatory advantages such as the ability to charge interstate
10 and intrastate access rates.

11 These companies may be afraid of long-term competition from Nextel Partners. Perhaps
12 they should be. As we continue to deploy our network and our technology gets better we
13 expect more consumers will choose our services over landline services. Fundamentally,
14 however, consumers should be able to make these decisions, which will only happen if
15 wireless networks can be built and maintained in high cost areas of Idaho.

16 **Q: PLEASE SUMMARIZE THE SPECIFIC POINTS THAT YOU MAKE IN THIS REBUTTAL**
17 **TESTIMONY.**

18 A: Nextel Partners provides the supported services and commits to do so where it seeks
19 designation. Nextel Partners' requested service areas are appropriate and consistent with
20 law. Nextel Partners' request to be designated in only certain Citizens exchanges is not
21 "cream skimming," but based on our license boundaries, and fully consistent with federal
22 law.

23 The record in this case clearly demonstrates that Nextel Partners' designation would serve
24 the public interest. Nextel Partners brings the benefits of increased competition, and the
25 benefits of Nextel Partners' service offerings, such as increased local calling areas and

1 mobility, and its commitment to provide rural consumers with services available in urban
2 areas, at the same rates. This case should be about customers having the opportunity to
3 choose for themselves the basic service package that best meets their needs. The
4 Intervenor's opposition to that concept is contrary to clear federal policy, and is designed
5 to benefit themselves, not the public. This Commission should take advantage of federal
6 funding that is available to allow Nextel Partners to extend its high quality network into
7 more areas of Idaho.

8 **II. NEXTEL PARTNERS PROVIDES THE SUPPORTED SERVICES**

9 **Q: YOU PREVIOUSLY TESTIFIED THAT NEXTEL PARTNERS PROVIDES THE FCC'S NINE**
10 **SUPPORTED SERVICES. IS THAT DISPUTED?**

11 **A:** I am not sure. Mr. Tade suggests that we do not satisfy local usage requirements and he
12 attacks our interconnection capabilities. LT Direct, pp. 10-12, 14-15. As to local usage,
13 he seems to think that unlimited local usage is a supported service. It is clearly not.
14 Local usage is defined as "an amount of minutes of use of exchange service ... provided
15 free of charge." 47 C.F.R. § 54.101(a). In fact, the FCC has recently determined that
16 "unlimited local usage should not be added to the list of supported services." *In the*
17 *Matter of Federal-State Joint Board on Universal Service*, CC 96-45, FCC 03-170, Order
18 and Order on Reconsideration, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*").

19 I have testified that we provide customers with an amount of local usage free of charge.
20 We currently do include unlimited usage as part of one service offering, but have found
21 customers generally do not need – and do not want to pay for – 43,000 minutes of use per
22 month. Mr. Tade apparently believes that Nextel Partners must provide unlimited local
23 usage simply because the Commission has previously required Citizens, in its capacity as

1 an ILEC, to do so. But under the federal rules it is clear that unlimited local usage is not
2 a universal service under federal law.

3 **Q: WHAT DOES HE SAY ABOUT NEXTEL PARTNERS' INTERCONNECTION CAPABILITIES?**

4 A: He claims "[m]any wireless carriers, including Clear Talk and Nextel [Partners], do not
5 properly compensate rural ILECs for wireless calls terminated on ILECs' local networks."
6 LT Direct, p. 14. Mr. Tade further states that "both Clear Talk and Nextel enjoy the
7 benefit of the ILECs' networks without paying for the use of those networks," and that if
8 designated, Nextel Partners "will actually receive Federal monies to use for free the
9 networks that were constructed and paid for by the ILECs." LT Direct, pp. 14-15.

10 I am unclear as to what ETC requirement Mr. Tade is addressing here. Whether or how
11 Nextel Partners and rural ILECs compensate one another is not a required or even
12 relevant consideration in the ETC analysis. But even if it were, Mr. Tade is simply
13 wrong. Nextel Partners has agreements in place that allow it to provide its customers
14 with access to public switched network, which is what is required of an ETC.

15 **Q: HAS NEXTEL PARTNERS AVOIDED ENTERING INTO INTERCONNECTION AGREEMENTS**
16 **WITH RURAL TELEPHONE COMPANIES?**

17 A: No. But in most cases, it makes more sense for rural telephone companies like Citizens
18 and Nextel Partners to operate under a bill and keep arrangement in which each
19 terminates the other carrier's calls without billing each other. Nextel Partners has
20 received no other requests for negotiations with Citizens and so assumes it is satisfied
21 with this arrangement. I am aware of at least one other state in which Nextel Partners
22 does have a formal agreement with Citizens.

1 The Commission should find Nextel Partners provides the FCC's supported services as
2 required by Section 214(e) of the Act.

3 **III. NEXTEL PARTNERS SATISFIES SERVICE AREA REQUIREMENTS**

4 **Q: WHAT IS THE SERVICE AREA REQUIREMENT FOR AN ETC?**

5 A: For areas served by a rural telephone company, Section 214(e)(5) of the
6 Telecommunications Act provides that an ETC's designated service area must be that
7 rural telephone company's study area unless the ETC seeks authority to service within a
8 smaller area. A rural telephone company's "study area" is generally defined as all of the
9 Company's existing certificated exchange areas in a given state. *Universal Service*
10 *Order*, ¶ 172 n. 434.

11 **Q: DO THE WITNESSES QUESTION NEXTEL PARTNERS' ABILITY TO SATISFY SERVICE AREA**
12 **REQUIREMENTS?**

13 A: I believe they agree that Nextel Partners has identified its requested service areas in a
14 manner consistent with the Act. However, both Mr. Tade and Mr. Trampush contend that
15 Nextel Partners' request in Citizens areas is cream skimming. Mr. Tade and Mr.
16 Trampush misread at best, and misrepresent at worst, federal law regarding service area
17 obligations.

18 **Q: LET'S BEGIN WITH MR. TADE. HOW EXACTLY DOES HE ATTACK NEXTEL PARTNERS'**
19 **SATISFACTION OF SERVICE AREA REQUIREMENTS?**

20 A: Mr. Tade first argues that Nextel Partners' request for designation in only certain Citizens'
21 exchanges "fosters asymmetric regulation." LT Direct, p. 7.

22 **Q: IS HE CORRECT?**

23 A: No, absolutely not. There is a process in federal law to authorize service in only a
24 portion of a rural LEC service area. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). We

1 are seeking designation in most of the Citizens exchanges within our licensed areas, and
2 have excluded those where we do not hold licenses. We have excluded from our request
3 a few Citizens exchanges that are distant from our network because we simply do not
4 believe that it is reasonable to commit to serve there at this time. We hope at some point
5 to extend our designation to all areas within where we hold licenses. There is simply
6 nothing sinister about what we have done.

7 Moreover, I understand that the original reason for requiring a competitive ETC to serve
8 throughout the study areas was that universal service support was based on costs
9 averaged over the study area. Now that Citizens has targeted its support on an exchange
10 basis, that rationale no longer exists. If the areas we have included in our application are
11 lower cost, then we presumably will get less support there. Mr. Tade's notion of
12 asymmetric regulation is essentially the same as Mr. Trampush's cream skimming
13 concept. However, both witnesses seem to disagree with the FCC on this point:

14 Rural telephone companies, however, now have the option of
15 disaggregating and targeting high-cost support below the study area level
16 so that support will be distributed in a manner that ensures that the per-line
17 level of support is more closely associated with the cost of providing
18 service. Therefore, any concern regarding "cream-skimming" of
19 customers that may arise in designating a service area that does not
20 encompass the entire study area of the rural telephone company has been
21 substantially eliminated.

22 *In the Matter of Federal-State Joint Board on Universal Service Petition for*
23 *Reconsideration of Western Wireless Corporation's Designation as an Eligible*
24 *Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Order on
25 Reconsideration, FCC 01-311, ¶ 12 (rel. Oct. 19, 2001) (emphasis added). Mr. Wood's
26 testimony deals with this issue in more detail.

1 **Q: WHAT ABOUT SUGGESTIONS THAT NEXTEL PARTNERS SUBMIT A DETAILED**
2 **EXPLANATION FOR HOW IT WILL BUILD OUT ITS NETWORK TO SERVE ALL CUSTOMERS**
3 **WITHIN RURAL TELEPHONE COMPANY STUDY AREAS IMPLICATED IN ITS APPLICATION?**
4 **LT DIRECT, P. 9; DT DIRECT, PP. 17-18.**

5 A: Nextel Partners is licensed in all areas where we seek ETC designation, and commits to
6 meet the obligations of an ETC. I am not a lawyer, but I understand that the FCC has
7 made clear that state commissions cannot require the detailed business plans as part of an
8 application. *In the Matter of Federal-State Joint Board on Universal Service Western*
9 *Wireless Corporation Petition for Preemption of an Order of the South Dakota Public*
10 *Utilities Commission*, CC Docket 96-45, Declaratory Ruling, FCC 00-248 (rel. Aug. 10,
11 2000) ("*Declaratory Ruling*"). Instead, a new entrant like Nextel Partners must be given
12 a reasonable opportunity, subject to real world business limitations, to enter an area. The
13 *Declaratory Ruling* contains the following discussion:

14 12. A new entrant faces a substantial barrier to entry if the
15 incumbent local exchange carrier (LEC) is receiving universal service
16 support that is not available to the new entrant for serving customers in
17 high-cost areas. We believe that requiring a prospective new entrant to
18 provide service throughout a service area before receiving ETC status has
19 the effect of prohibiting competitive entry in those areas where universal
20 service support is essential to the provision of affordable
21 telecommunications service and is available to the incumbent LEC. Such
22 a requirement would deprive consumers in high-cost areas of the benefits
23 of competition by insulating the incumbent LEC from competition.

24 13. No competitor would ever reasonably be expected to enter a high-
25 cost market and compete against an incumbent carrier that is receiving
26 support without first knowing whether it is also eligible to receive such
27 support. We believe that it is unreasonable to expect an unsupported
28 carrier to enter a high-cost market and provide a service that its competitor
29 already provides at a substantially supported price. Moreover, a new
30 entrant cannot reasonably be expected to be able to make the substantial
31 financial investment required to provide the supported services in high-
32 cost areas without some assurance that it will be eligible for federal
33 universal service support. In fact, the carrier may be unable to secure

1 financing or finalize business plans due to uncertainty surrounding its
2 designation as an ETC.

3 *Declaratory Ruling*, ¶¶ 12-13 (emphasis added).

4 This is exactly Nextel Partners' situation – we began providing service in parts of Idaho
5 only slightly more than three years ago. The ILECs have had many decades and
6 substantial universal service subsidies to build out their networks. As a competitor, we
7 cannot make business commitments about specific buildout until we are designated an
8 ETC, evaluate funding levels, consider our own capital budgets, and analyze other market
9 dynamics. Intervenors propose that we guarantee that we will complete a significant
10 buildout in a short period of time with no certainty that we will have any chance to make
11 a profit. No unregulated new entrant could ever meet this standard.

12 **Q: ARE THESE AREAS IMPORTANT TO NEXTEL PARTNERS' LONG TERM PLANS IN IDAHO?**

13 A: Absolutely. FCC licenses are neither inexpensive nor easy to obtain. Nextel Partners
14 does not acquire licenses unless it intends to use those licenses. Nextel Partners won its
15 Idaho spectrum through the exhaustive bidding process in multiple economic area license
16 auctions. In addition, we took the extra step of negotiating eighteen spectrum exchanges
17 (swaps) and purchase agreements so that we would have more than sufficient spectrum
18 for our Idaho customer base. Reaching these agreements was a lengthy and complicated
19 process, requiring negotiations, channel clearing, provision of replacement equipment,
20 retuning and licensing. We have made a company commitment to serve these areas.

21 **Q: DOES NEXTEL PARTNERS HAVE THE INTENT AND ABILITY TO PROVIDE SERVICE AS AN**
22 **ETC IN THE AREAS IDENTIFIED IN ITS APPLICATION?**

23 A: Yes, absolutely.

1 **Q: HOW DOES MR. TRAMPUSH DISPUTE NEXTEL PARTNERS' SATISFACTION OF SERVICE**
2 **AREA REQUIREMENTS?**

3 A: Mr. Trampush, like Mr. Tade, relies principally on concerns of alleged cream skimming
4 and the effect it may have on competition. Mr. Trampush contends that the requirement
5 that an ETC applicant serve the entire study area of a rural telephone company exists to
6 ward off what he deems to be anti-competitive "cherry picking." DT Direct, pp. 10-11.
7 As discussed above, however, the FCC has decided there are no such cherry picking
8 concerns given the option ILECs have to disaggregate support. This is a red herring.

9 **Q: SO THEN DOES NEXTEL PARTNERS SATISFY ALL FEDERAL ETC SERVICE AREA**
10 **OBLIGATIONS?**

11 A: There is no question that Nextel Partners can and will comply with all applicable FCC
12 service area requirements. Nextel Partners holds FCC licenses that cover all of its
13 requested designated areas, and commits to the obligations of an ETC.

14 **IV. FEDERAL FUNDING MECHANISMS ARE IN THE HANDS OF THE FCC**

15 **Q: MR. TADE ALSO RAISES CONCERNS ABOUT THE IMPACT THAT HE BELIEVES NEXTEL**
16 **PARTNERS' ETC DESIGNATION WOULD HAVE ON THE FEDERAL UNIVERSAL SERVICE**
17 **FUND. LT DIRECT, PP. 12-13. ARE HIS COMMENTS VALID?**

18 I do not believe so. I will defer to Mr. Wood, who is quite familiar with that topic.

19 **V. NEXTEL PARTNERS' ETC DESIGNATION SERVES THE PUBLIC INTEREST**

20 **Q: DO THE WITNESSES CONTEND THAT DESIGNATING NEXTEL PARTNERS AS AN ETC**
21 **WOULD NOT SERVE THE PUBLIC INTEREST?**

22 A: Yes, both witnesses suggest in one way or another that it would not be in the public
23 interest to designate Nextel Partners as an ETC. But both fail to properly account for
24 relevant public interest factors.

25 **Q: LET'S BEGIN WITH MR. TADE. HOW DOES HE CHALLENGE THE PUBLIC INTEREST**
26 **DETERMINATION?**

1 A: Mr. Tade suggests that the public interest could only be served if the Commission
2 imposes upon Nextel Partners the following additional requirements: (1) publish and
3 adhere to a tariff, (2) file service area maps, (3) provide service quality data, and (4)
4 respond to customer complaints and otherwise adhere to certain customer relations rules.
5 LT Direct, pp. 15-16.

6 **Q: HOW DO YOU RESPOND?**

7 A: Mr. Tade's proposed requirements are not in the Act, the FCC's Rules, or the
8 Commissioner's rules, and simply do not apply to the wireless industry generally. We are
9 a federally-regulated carrier under the FCC's regulatory authority subject to competitive
10 market pressures.

11 **Q: ARE REQUIREMENTS SUCH AS THOSE PROPOSED NECESSARY TO SERVE THE PUBLIC**
12 **INTEREST?**

13 A: No. We do not file tariffs. Instead, our rates are publicly available and are far more
14 accessible than they would be if tariffed. State service rules do not apply to us, but based
15 on my review of the Idaho rules, we generally meet or exceed those standards as a matter
16 of basic business practice. In a competitive market carriers do not need to be forced to
17 provide high quality service. The same is true with regard to customer complaints.
18 Nextel Partners was recently designated as an ETC in Wisconsin, and that Commission
19 recognized that it is in the public interest to let a wireless carrier operate as a wireless
20 carrier and provide more and better services to customers. *Application of NPCR, Inc.*
21 *d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in*
22 *Wisconsin*, PSC Docket No. 8081-TI-101, Final Decision (Sept. 30, 2003) (Ex. 108.)

1 I would also like to point out what I believe to be the absurdity of suggesting that
2 competitive entrants need to be regulated the same as dominant monopoly providers. The
3 FCC, this commission (as I understand it) and every other state commission I am aware
4 of has decided as a matter of policy that these two types of carriers should be regulated
5 differently. That is not unfair, it is sound, well-established public and economic policy.

6 **Q: BUT MR. TADE ALSO CLAIMS THAT "CONGRESS HAD QUESTIONS ABOUT WHETHER IT**
7 **WAS WISE TO HAVE COMPETING ETCs IN RURAL AREAS." LT DIRECT, P. 16. IS HE**
8 **CORRECT?**

9 A: I don't know how he could be. Congress explicitly incorporated the benefits of
10 competition in rural areas into its declared principles "for the preservation and
11 advancement of universal service:"

12 Consumers in all regions of the Nation, including low-income consumers
13 and those in rural, insular, and high cost areas, should have access to
14 telecommunications and information services, including interexchange
15 services and advanced telecommunications and information services, that
16 are reasonably comparable to those services provided in urban areas and
17 that are available at rates that are reasonably comparable to rates charged
18 for similar services in urban areas.

19 47 U.S.C. § 254(b)(3). I believe "all areas" means "all areas." Mr. Tade apparently
20 disagrees.

21 **Q: DOES MR. TRAMPUSH ALSO QUESTION WHETHER NEXTEL PARTNERS' DESIGNATION AS**
22 **AN ETC WOULD SERVE THE PUBLIC INTEREST?**

23 A: Yes, and his testimony is similarly misguided.

24 **Q: WHAT SPECIFICALLY DOES MR. TRAMPUSH CLAIM?**

25 A: Mr. Trampush predictably claims that Nextel Partners has presented no evidence in favor
26 of the public interest other than the presumed benefits of competition. DT Direct, p. 24.
27 Mr. Trampush then devotes nearly the remainder of this public interest discussion to

1 whether Nextel Partners' designation would, in the very short term, promote competition.
2 DT Direct, pp. 26-29.

3 **Q: IS THIS POINT VALID?**

4 A: No. Universal service policies are not about what happens today or tomorrow, but about
5 whether, in the long run, Idaho consumers will have access to telecommunications
6 facilities and services like those available for urban areas, and whether wireless carriers
7 will be given a fair chance to compete with landline companies. Nextel Partners believes
8 it is in the public interest to make federal universal service funding available so that
9 Nextel Partners can continue to fulfill its mission of providing small and rural service
10 areas with basic and advanced services at rates terms and conditions comparable to those
11 charged in urban areas. In other words, Nextel Partners believes rural customers are
12 entitled to the full benefits of wireless service even though they live in areas that are
13 costly to serve.

14 As an example, Albion takes in over \$2,000,000 per year in federal support mechanisms
15 to serve 5,000 lines. Can Nextel Partners ever expect to compete effectively if Albion
16 has a \$2,000,000 per year cash advantage over Nextel Partners simply because it is the
17 ILEC?

18 **Q: SO WHAT IS THE PROPER PUBLIC INTEREST ANALYSIS?**

19 A: As I stated in my direct testimony, the public interest determination should be made from
20 the presumption that competition benefits consumers, and that all citizens in the state are
21 entitled to the benefits of competitive universal service. If competition is denied, it must
22 be based on some fundamental difference between rural and non-rural service areas.

1 The FCC has mandated that a public interest inquiry should examine whether consumer
2 benefits from designation outweigh demonstrated adverse impacts on consumers. *In the*
3 *Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation*
4 *Petition for Designation as an Eligible Telecommunications Carrier In the State of*
5 *Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896, ¶ 16
6 (rel. Dec. 26, 2000), *aff'd*, FCC 01-311 (rel. Oct. 19, 2001).

7 **Q: DOES NEXTEL PARTNERS MEET THAT TEST?**

8 A: Yes. Despite the Act's promise of competitive telecommunications markets in all areas
9 of the nation, rural customers do not today have the choices that urban customers have.
10 Wireless companies like Nextel Partners that serve rural areas can fill that need perfectly,
11 but only if they are able to compete on a level playing field with the rural LECs. Nextel
12 Partners is a national company that has a corporate mission of providing top-quality
13 services to rural consumers at urban rates. Our continued buildout is good for consumers
14 in Idaho.

15 Nextel Partners provides high-quality basic and advanced services. Our network uses a
16 packet-based platform known as integrated Digital Enhanced Network (iDEN™)
17 technology, and provides exceptional sound and transmission quality, using state-of-the-
18 art methods capable of delivering Digital Cellular, Direct ConnectSM Service PUSH TO
19 TALK® (walkie-talkie service), Mobile Messaging, and Internet access. We implement
20 E911 upon request, which means consumers can purchase phones that accomplish GPS
21 location assistance in an emergency. The mobility of our service is a tremendous
22 convenience and safety feature that consumers want and need, especially important to

1 residents in rural areas where there may be many miles between landline phones. Indeed,
2 this can be of the utmost importance in emergencies.

3 **Q: WHAT CONSUMER CHOICES ARE PROVIDED BY NEXTEL PARTNERS THAT ARE NOT**
4 **OFFERED BY ILECS?**

5 A: As I said earlier, we provide the benefits of mobility. We offer larger local calling areas
6 to our customers, and in some offerings, provide nationwide calling. We offer our Direct
7 Connect service that cannot be provided by any ILEC. We offer mobile wireless data
8 services, including access to the Internet, email, and text messaging. We offer mobile
9 911 – perhaps the greatest personal safety feature available anywhere. We offer GPS
10 location for mobile subscribers where implemented by the PSAP. In addition, we operate
11 in an environment where carriers do not believe that customer service is something that
12 must be mandated by the government – we expect that competitive choice in rural LEC
13 areas will get rural telephone companies thinking more like competitors (fighting for
14 customers) and less like regulated monopolies (fighting to prevent competition).

15 **Q: HOW DOES COMPARABILITY FIT IN AS A UNIVERSAL SERVICE GOAL?**

16 A: Section 254(b)(3) of the Act states:

17 [C]onsumers in rural, insular, and high cost areas, should have access to
18 telecommunications and information services, including interexchange
19 services and advanced telecommunications and information services, that
20 are reasonably comparable to those services provided in urban areas and
21 that are available at rates that are reasonably comparable to rates charged
22 for similar services in urban areas. (Emphasis added).

23 Fundamentally, universal service is about bringing services to rural areas in a manner that
24 is comparable to that provided in urban consumers. Nextel Partners bridges this gap
25 between urban and rural services.

1 Nextel Communications, a separate publicly-traded company, serves large urban markets.
2 Nextel Partners provides its Idaho markets with the same rates, service offerings, terms,
3 and conditions as offered by Nextel Communications in larger markets. This aspect of
4 comparability is directly in line with universal service goals.

5 **Q: DOES NEXTEL PARTNERS PROVIDE GOOD CUSTOMER SERVICE?**

6 A: Yes, absolutely. As I stated in my direct testimony, we take great pride in our high level
7 of customer service. Robust competition requires that we show each customer why
8 Nextel Partners is the best of the available alternatives for his or her communications
9 needs, and thus we are firmly committed to ensuring high quality customer satisfaction
10 and service. It is no surprise that Nextel Partners has one of the highest customer
11 satisfaction and customer retention ratings in the industry.

12 Designating Nextel Partners as an ETC will also serve the public interest by furthering
13 the extensive role we play in providing communications services to public schools,
14 libraries and local, state and federal government agencies, specifically law enforcement.
15 Because designating Nextel Partners as an ETC in rural telephone company areas in
16 Idaho will bring the benefits of competition without causing adverse impacts for
17 consumers, the Commission should find that designating Nextel Partners as an ETC
18 serves the public interest in accordance with Section 214(e)(2).

19 **Q: HAVE INTERVENORS IDENTIFIED ANY CONSUMER HARMS THAT WILL BE CAUSED BY**
20 **ALLOWING NEXTEL PARTNERS TO CONTINUE TO PROVIDE SERVICE AND EXTEND ITS**
21 **NETWORK TO RURAL CONSUMERS IN IDAHO?**

22 A: Not really. Mr. Trampush talks at a high level about costs and density (DT Direct, p. 8),
23 but that does not tell the Commission anything about whether consumers will be harmed

1 if competitive universal service is provided. Mr. Wood will address "evidence" that Mr.
2 Trampush includes in this testimony.

3 I will also point out that we will obtain funding only if customers choose our service. In
4 this market, if customers choose our service, that means they find more value in that
5 service than they can get elsewhere. If consumers do not find value in the service, they
6 will not choose to take that service, and we will not obtain funding. I do not see how
7 consumers can be harmed if they have more competitive choices from which to choose.

8 **Q: INTERVENORS SEEM UNCOMFORTABLE WITH THE IDEA OF WIRELESS CARRIERS**
9 **PROVIDING SERVICE AS WIRELESS CARRIERS? HOW DO YOU RESPOND?**

10 A: The Commission should not have that same discomfort simply because we are subject to
11 federal regulation. The wireless industry is a wonderful example of how new competitive
12 markets can work to benefit consumers. The wireless industry has grown significantly,
13 and is extremely competitive. The FCC has generally taken an approach that
14 competition, market pressures and consumer demand are the best way to ensure that
15 consumers get the best services at the most affordable prices. In fact, the FCC recently
16 issued its annual report on CMRS competition, and its conclusions were described by
17 Chairman Powell as follows:

18 The annual analysis of the CMRS market demonstrates how a lighter
19 regulatory hand has ushered in innovation and technological advancement,
20 and the power of facilities-based competition into the marketplace. Today
21 95% of American consumers now have three or more choices in wireless
22 providers, and a stunning 71% have six or more choices. And with this
23 wealth of choices has come lower per minute prices and more innovative
24 services. The conclusion is inescapable: the wireless industry is highly
25 competitive. The Report, however, notes that rural areas have fewer
26 competitors than urban areas. I look forward to working with my
27 colleagues to develop policies that will enhance the effectiveness of
28 competition in rural areas by removing unnecessary regulatory barriers to
29 facilitating the deployment and delivery of spectrum-based services in

1 these areas. This is the most comprehensive wireless competition report
2 that the Commission has ever produced and I applaud the efforts of the
3 Wireless Bureau to update, verify, and diversify our data to better capture
4 the state of the marketplace.

5 *In the matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation*
6 *Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect*
7 *to Commercial Mobile Services*, WT Docket No. 02-379, Eighth Report, FCC 03-150
8 (rel. July 14, 2003) (separate statement of Chairman Powell) (emphasis added).

9 Intervenor challenge wireless service, and would have the Commission decide that rural
10 consumers are hurt by the current regulatory structure imposed by the FCC, and the
11 public interest is served by denying access to capital and erecting regulatory barriers to
12 the continuing deployment of wireless service in rural areas. The FCC – the agency
13 responsible for regulating the industry – clearly does not think such regulations serve the
14 public interest. The FCC instead thinks that additional regulations will inhibit
15 competition in a way that hurts rural consumers. We agree with the FCC.

16 **Q: HOW DO YOU ADDRESS THE CLAIMS THAT NEXTEL PARTNERS DOES NOT CARE ABOUT**
17 **RESIDENTIAL CUSTOMERS. DT DIRECT, PP. 19-20?**

18 A: Mr. Trampush does not understand our company at all, and he is wrong. For example, he
19 relies on an outdated, third-party assessment of another company's stock to draw
20 conclusions about Nextel Partners. DT Direct, p. 19. He also reports the line count data
21 we provided in discovery and concludes that residential customers are included in the
22 same category as single-line business, and concludes this is "presumably because the
23 number of residential customers is not large enough (or of sufficient interest to the
24 company) to justify tracking them separately." DT Direct, p. 21. This is nonsense, and
25 he knows it. We told the ITA in the discovery response he references that we were

1 producing line count data as it is filed with the Universal Service Administrative
2 Company ("USAC"). As I am sure Mr. Trampush knows, USAC requires that those
3 types of lines be reported together. We actually had to create a new internal database to
4 meet this USAC requirement.

5 Had Mr. Trampush actually looked at our service offerings or analyzed our marketing
6 materials, he would have seen that we do market heavily to residential consumers. Many
7 of the nationally-run Nextel television ads over the last year have featured residential and
8 family uses of our Direct Connect product. This is a service that many families find
9 extremely valuable. We take advantage of that by marketing shared plans where two
10 phones share one bucket of minutes.

11 Other rate plans are also clearly designed to win residential customers. We provide
12 offerings that are competitive with other carriers' residential-focused offerings, and
13 provide free nights and weekends, which is a feature that residential customers care
14 about.

15 Again, we are a young company. As we move forward our focus on residential
16 customers will only grow. On October 1, our service plans changed, and our lowest-cost
17 plan is \$6 per month less than was previously the case. If we are going to build out to
18 sparsely-populated areas, we are going to need to try to win every customer we can.
19 Nextel Partners will be there for residential customers in Idaho.

20 **Q: CAN YOU SUMMARIZE YOUR TESTIMONY?**

21 **A:** Yes. Nextel Partners has shown that it meets each and every one of the requirements to
22 be designated an ETC set forth in 47 U.S.C. § 214(e) and Part 54 of the FCC's rules.

1 Furthermore, it is in the public interest to grant the ETC designation, because of the
2 increased competition, innovative service, and enhanced consumer choices that Nextel
3 Partners can bring to the areas in which it seeks designation. Therefore, Nextel Partners
4 urges the Commission to approve its Application for ETC designation.

5 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A: Yes.

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of NPCR, Inc., d/b/a Nextel Partners for Designation
as an Eligible Telecommunications Carrier in Wisconsin

8081-TI-101

FINAL DECISION

This is the final decision in this proceeding to determine whether to designate NPCR, Inc. (Nextel) as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive universal service fund (USF) monies.

Introduction

Nextel filed an application for ETC designation on April 24, 2003. The Commission issued a Notice of Investigation on June 27, 2003. The Commission issued a Notice Requesting Comments on September 12, 2003. A number of entities filed comments on September 18, 2003.¹ The Commission discussed this matter at its September 25, 2003 open meeting.

Nextel requested ETC designation for the exchanges shown in Appendix B. The territories for which ETC designation is requested are served by a mix of rural and non-rural telecommunications carriers.

¹ Citizens Utility Board ("CUB"); CenturyTel, Inc. and TDS Telecom Corporation; the Wisconsin State Telecommunications Association Small Company Committee (WSTA Small Company Committee); Wisconsin State Telecommunications Association ILEC Division (WSTA ILEC Division); Wisconsin State Telecommunications Association Wireless Division; Nsighttel Wireless (for seven applicants); Nextel and ALLTEL.

Findings of Fact

1. The wireless industry, its customary practices, its usual customer base, and Nextel's desire not to obtain state USF money create an unusual situation.
2. It is reasonable to adopt different ETC eligibility requirements and obligations for Nextel than specified by Wis. Admin. Code § PSC 160.13.
3. It is reasonable to require Nextel to meet only the federal requirements for ETC status in order to be eligible for ETC designation.
4. It is reasonable to relieve Nextel from ETC obligations other than those imposed under federal law.
5. It is reasonable to require that Nextel not apply for state USF funds and that if it ever does, all state requirements for and obligations of ETC status shall again be applicable to it.
6. Nextel meets the federal requirements for ETC designation.
7. It is in the public interest to designate Nextel as an ETC in certain areas served by rural telephone companies.
8. It is reasonable to grant Nextel ETC status in the non-rural wire centers indicated in its application, to the extent that the wire centers are located within the state.
9. It is reasonable to grant Nextel ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent such areas are located within the state.
10. It is reasonable to grant Nextel ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone

company, to the extent the areas are located within the state, conditioned upon the Federal Communications Commission (FCC) approving the use of the smaller areas.

Conclusions of Law

The Commission has jurisdiction and authority under Wis. Stats. §§ 196.02, 196.218 and 196.395; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of the Telecommunications Act of 1996, to make the above Findings of Fact and to issue this Order.

The law does not require the Commission conduct a hearing in this docket as requested by the CUB; CenturyTel, Inc., and TDS Telecom Corporation; and the WSTA Small Company Committee and WSTA ILEC Division.

If “notice and opportunity for hearing” as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement.

Opinion

On December 20, 2002, the Commission granted the U.S. Cellular ETC status as applied for in Docket No. 8225-TI-102. *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 8225-TI-102, 2002 WL 32081608, (Wisconsin Public Service Commission, December 20, 2002). The instant application is substantively similar to the application of U.S. Cellular. The Commission reaffirms its decision in Docket No. 8225-TI-102 and relies on the opinion issued in the Final Decision in that docket, to approve Nextel’s application.

