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

1 **Q: PLEASE STATE YOUR NAME.**

2 A. My name is Don J. Wood.

3 **Q: ARE YOU THE SAME DON J. WOOD WHO PREFILED DIRECT TESTIMONY ON BEHALF OF**  
4 **NEXTEL PARTNERS IN THIS PROCEEDING?**

5 A: Yes, but my business address has changed since that time. My current business address  
6 is 30000 Mill Creek Avenue, Suite 395, Alpharetta, Georgia 30022.

7 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8 A: I have been asked by NPCR, INC. d/b/a Nextel Partners to address the responsive  
9 testimony of Daniel L. Trampush on behalf of The Idaho Telephone Association ("ITA")  
10 and Citizens Telecommunications Company of Idaho ("Citizens"), and Lance A. Tade on  
11 behalf of Citizens Telecommunications Company of Idaho (collectively, the "rural  
12 ILECs"). Mr. Trampush and Mr. Tade present several well worn arguments in an effort  
13 to persuade the Commission to deny Nextel Partners' request for designation as an ETC.  
14 Without exception, these arguments (1) are wholly unsupported by either facts or sound  
15 public policy, and (2) have been explicitly rejected by state regulators, the FCC, or both.  
16 Neither Mr. Trampush nor Mr. Tade present any valid public policy or factual reason  
17 why this Commission should not grant Nextel Partners' Application for ETC designation.

18 **Q: WHAT QUESTIONS ARE BEFORE THE COMMISSION IN THIS PROCEEDING?**

19 A: There are three relevant questions: (1) Has Nextel Partners committed to offer and  
20 advertise the nine supported services throughout the proposed service area?, (2) Is the  
21 designation of Nextel Partners as an ETC in the public interest?, and (3) Should this  
22 Commission (and subsequently the FCC), after taking into account the recommendations  
23 of the Joint Board, approve the service area "redefinition" requested by Nextel Partners?

24 **Q: ARE THERE ANY ADDITIONAL QUESTIONS BEFORE THE COMMISSION IN THIS CASE?**

1 A: No. While Mr. Trampush and Mr. Tade tirelessly argue otherwise, this proceeding is *not*  
2 an opportunity to second guess Congressional policy as set forth in the 1996 Act or the  
3 FCC's interpretation and implementation of that policy as set forth in the federal rules.  
4 Although he takes a different approach later in his testimony, Mr. Trampush at least  
5 initially acknowledges (p. 4) that the focus of this proceeding should be specific to the  
6 applicants and specific geographic areas at issue in this proceeding.

7 **Q: DO MR. TRAMPUSH OR MR. TADE PROVIDE ANY SPECIFIC FACTS RELATED TO ANY OF**  
8 **THE RURAL ILEC SERVICE AREAS THAT WOULD JUSTIFY A REJECTION OF NEXTEL**  
9 **PARTNERS' APPLICATION?**

10 A: No. Both Mr. Trampush and Mr. Tade have instead elected to provide a litany of oft-  
11 repeated general concerns and speculation. When these witnesses do provide information  
12 that is at least in part specific to the areas in question (for example, Mr. Trampush at pp.  
13 8-9, 19-20)<sup>1</sup> it is completely irrelevant with respect to the issues before the Commission.  
14 In the end, the rural ILEC witnesses offer no facts that could form the basis of a decision  
15 that it is not in the public interest to designate Nextel Partners as an ETC in these areas.

16 **Q: BOTH MR. TRAMPUSH (24-26) AND MR. TADE (12-13) ARGUE FOR A COST BENEFIT**  
17 **ANALYSIS. DO YOU AGREE WITH THEIR REASONING?**

18 A: I have no problem with the application of a cost-benefit analysis as long as both the  
19 benefits and costs considered are specific to matter before the Commission in this  
20 proceeding. In its Application and direct testimony, Nextel Partners has presented facts  
21 that are specific to the operation of Nextel Partners in the Idaho service areas in question.

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<sup>1</sup> Mr. Trampush goes to some effort to demonstrate that (1) the area served by the rural ILECs is rural (a fact not in dispute and which is fully considered in the Act and FCC's rules), and (2) that these areas are more costly to serve, particularly for wireline carriers, than less rural areas (a fact also not in dispute and also fully considered in the Act and FCC's rules).

1 In direct contrast, Mr. Tade argues (p. 12) that the analysis should be much broader, and  
2 consider "(a) the growth in the size of the federal USF needed to support multiple ETCs  
3 and (b) the consequent increase in the interstate contribution factor required to finance  
4 that growth."<sup>2</sup> Mr. Tade's focus here is at 30,000 feet when it should be at ground level.  
5 An examination of the impact of fund size and the public support of multiple networks<sup>3</sup> is  
6 currently being undertaken, at the FCC's direction, by the Joint Board. Any costs to be  
7 considered in this proceeding are those that are specific to the details of Nextel Partners'  
8 application or specific to the characteristics of any of the rural ILEC service areas that are  
9 the subject of the application.

10 Mr. Trampush similarly suggests that the Commission consider a question of whether the  
11 (vaguely defined) costs of an ETC designation justify growth of the federal fund,<sup>4</sup> and  
12 whether any wireless services are currently available within the areas in question. Like  
13 Mr. Tade, Mr. Trampush's focus is on the wrong questions.

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<sup>2</sup> As I describe later in my testimony, Mr. Tade's statement of concern here is a bit disingenuous; by far and away the primary contributor to growth of the federal high cost fund has been the request of the rural ILECs – and the FCC's decision to grant that request – for an increase in the funding that they receive. Mr. Tade's concerns about growth in the fund and growth in the interstate contribution factor appear to be limited to those instances in which the growth at issue results in funds going to carriers other than the rural ILECs.

<sup>3</sup> As I will explain in more detail later in my testimony, the funding of more than one network over the short run may be necessary in order to minimize the size of the fund over the long term. If Mr. Trampush is right when he insists that wireless carriers have much lower network costs than wireline carriers, then such a scenario exists in this case: it will be necessary to temporarily fund both a wireline and wireless network in the short run until the more efficient/less costly wireless network can take over and represent the only funded network. This would yield a significantly lower fund size over the long run.

<sup>4</sup> Like Mr. Tade, Mr. Trampush spends very little time fretting about increases in the support provided to ILECs. Such increases dwarf any impact on the size of the fund attributable to the designation of CETCs.

1 **Q: MR. TRAMPUSH ARGUES (P. 4) THAT A NON-ILEC APPLICANT FOR ETC DESIGNATION**  
2 **BEARS A BROAD BURDEN OF PROOF IN A PROCEEDING SUCH AS THIS ONE. DO YOU**  
3 **AGREE?**

4 A: No. Nextel Partners clearly has a burden to demonstrate its ability and commitment to  
5 offer the nine supported services throughout its requested service areas and that it will  
6 advertise the availability of such services. Nextel Partners has made such a  
7 demonstration in its application and direct testimony.

8 Mr. Trampush apparently believes that in addition to such a demonstration and  
9 commitment, Nextel Partners or any other potential CETC should also be required to  
10 prove that no harm will come to the rural ILEC serving the areas in question. While Mr.  
11 Trampush may wish otherwise, this is simply not the standard. As I described in my  
12 direct testimony, both the FCC and the Courts have been clear that the purpose of the  
13 universal service provisions of the Act are to protect end user customers, not carriers or  
14 types of carriers. Mr. Trampush argues (p. 5) that a purpose of the Act is to "protect  
15 incumbent rural telephone companies."<sup>5</sup> This is simply not correct. The Act and FCC  
16 rules provide specific means (disaggregation of support, for example) for rural ILECs to  
17 respond to competitive entry, but it is up to the ILECs to respond to competitive entry  
18 using the provided tools. The Act is clear that no classification of carriers, including  
19 rural ILECs, are to be protected from competitive entry.

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<sup>5</sup> Mr. Trampush refers specifically at this point in his testimony to protection from what he terms "unfair competition." He does not define this term, and I have been unable to identify, based on his testimony, any circumstances in which Mr. Trampush would consider competition to be "fair," short of requiring any CETC to operate exactly as the ILEC operates, offer the same services that the ILEC offers, and be hamstrung so that any network or operational efficiency advantages of the CETC can't flow through to consumers. From a consumer benefit standpoint, Mr. Trampush's version of "fair competition" would be pointless.

1 **Q: MR. TRAMPUSH AND MR. TADE ARGUE THAT THE ACT ONLY INTENDED TO BRING**  
2 **COMPETITION TO SOME MARKETS. HOW DO YOU RESPOND TO THESE ARGUMENTS?**

3 A: Mr. Tade states (p. 16) that "clearly, Congress had questions about whether it was wise to  
4 have competing ETCs in rural areas. In fact, the Act presumes that a single ETC will be  
5 the norm for areas served by rural carriers." Mr. Tade must be reading a different  
6 Telecommunications Act. In the copy that I have, the presumption is quite the opposite.  
7 For example, the purposes of the Act are set forth in the Preamble: "To promote  
8 competition and reduce regulations in order to secure lower prices and higher quality  
9 services for American telecommunications consumers and encourage the rapid  
10 deployment of new telecommunications technologies." Similarly, the introduction to the  
11 Conference Report states the Act's purpose is to "provide for a pro-competitive,  
12 deregulatory national policy framework designed to accelerate rapidly private sector  
13 deployment of advanced telecommunications and information technologies and services  
14 to *all* Americans by opening *all* telecommunications markets to competition." Section  
15 254 (b) (3) likewise makes it clear that "rural, insular, and high-cost areas" were not to be  
16 excluded from this new market paradigm. Now that a carrier such as Nextel Partners is  
17 seeking to do exactly what the Act contemplates – invest in new facilities to provide  
18 competitive services – Mr. Trampush and Mr. Tade argue that such activity is  
19 inconsistent with the intent of the Act.

20 **Q: YOU STATED THAT THE FIRST RELEVANT QUESTION IN THIS PROCEEDING IS WHETHER**  
21 **NEXTEL PARTNERS HAS COMMITTED TO OFFER AND ADVERTISE THE NINE SUPPORTED**  
22 **SERVICES THROUGHOUT THE PROPOSED SERVICE AREA. HAS IT DONE SO?**

23 A: Yes. Nextel Partners made these commitments in its application. As described in more  
24 detail by Nextel Partners witness Peabody, the Company stands ready and willing to meet  
25 these commitments.

1 **Q: WILL NEXTEL PARTNERS OFFER SERVICES THAT PROVIDE BENEFITS TO CONSUMERS?**

2 A: Yes. As described in the Application and reiterated by Mr. Peabody, Nextel Partners will  
3 provide the residents and businesses in the specified areas with important options. End  
4 users will be able to choose the technology – wireline or wireless – that best meets their  
5 individual needs. End users will also be able to choose from among rate plans that will  
6 allow them to more closely match the service that they receive (and pay for) with their  
7 calling patterns and frequency. Last, but certainly not least, end users will have greater  
8 access to the personal and public safety benefits of wireless service.

9 **Q: IS THERE SOME FACT OR ISSUE THAT IS SPECIFIC TO NEXTEL PARTNERS, OR THE**  
10 **SERVICE AREAS WITHIN WHICH IT SEEKS ETC DESIGNATION IN IDAHO, THAT WOULD**  
11 **OUTWEIGH THOSE BENEFITS?**

12 A: No. Nextel Partners' desire to serve – and its commitment to do so – fully complies with  
13 the service obligations set forth in the Act and is consistent with the obligations of the  
14 rural ILECs that have already been designated as ETCs in their respective service areas.

15 **Q: AT PP. 8-9, MR. TRAMPUSH ARGUES THAT THE AREAS IN IDAHO FOR WHICH NEXTEL**  
16 **PARTNERS SEEKS ETC DESIGNATION HAVE A VERY LOW POPULATION DENSITY. IS THIS**  
17 **ANALYSIS RELEVANT TO THE QUESTIONS BEFORE THE COMMISSION IN THIS**  
18 **PROCEEDING?**

19 A: No. Mr. Trampush describes the results of an analysis performed by ITA "in preparation  
20 for an earlier proceeding" that indicates low line density. Even if accurate, these  
21 calculations have no relevance for several reasons.

22 First, ITA has performed the wrong calculation. Mr. Trampush describes a calculation of  
23 access lines per "square mile of service territory." For such a calculation to have  
24 meaning, the denominator should be "square mile of area served." All ILECs, and  
25 particularly rural ILECs, have portions of their service territory that are served, and  
26 portions that are uninhabited and therefore unserved. A large proportion of unserved area

1 will significantly distort any line density calculations performed, and this appears to be  
2 the case here. Network costs are a function of the line density of the area actually served;  
3 not the lines divided by square miles of service territory.

4 Second, and more importantly, the identification of an area of low line density in no way  
5 supports a conclusion that the designation of a CETC is not in the public interest.<sup>6</sup> While  
6 the service areas for which Nextel Partners seeks designation in rural ILEC areas differs  
7 from more densely populated areas of the State, these differences were fully  
8 contemplated by the FCC in the *Fourteenth Report and Order*. The question is not "*Is*  
9 *the area served by the rural ILECs different from the area served by non-rural ILECs?*"  
10 but rather "*Is the area served by the rural ILECs at issue in this proceeding demonstrably*  
11 *different from the service areas of other rural ILECs, and different in a way that was*  
12 *unanticipated by the FCC when it adopted rules for finding both incumbent and*  
13 *competitive ETCs in high cost areas?*<sup>7</sup> There is nothing in the record to suggest that this  
14 is the case.

15 **Q: MR. TRAMPUSH AND MR. TADE ARGUE THAT NEXTEL PARTNERS SHOULD BE**  
16 **REQUIRED TO TAKE ON ADDITIONAL REGULATORY REQUIREMENTS BEFORE THE**  
17 **COMMISSION SHOULD CONCLUDE THAT NEXTEL PARTNERS' ETC PETITION IS IN THE**  
18 **PUBLIC INTEREST. DO YOU AGREE?**

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<sup>6</sup> In fact, the opposite may be true. In many areas of low density, the low cost solution for providing service is a wireless solution. If the necessary wireless technology had been available at the time the ILEC networks in these areas were built, it is likely that many of them would have been constructed as wireless, rather than wireline, networks.

<sup>7</sup> The FCC certainly anticipated competition in rural telephone company areas. As I discuss later in this testimony, the FCC, after much comment and careful consideration, adopted a mechanism to fund both incumbent and competitive ETCs in high-cost areas. *Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45*, Released May 23, 2001 ("*Fourteenth Report and Order*"). This funding mechanism will be in place until at least 2006, and the FCC viewed this as a way to generate competition in rural telephone company before moving to a forward-looking funding mechanism.



1 A: No. Mr. Tade (p. 7) argues against the application of "asymmetric regulation" to ETCs,  
2 and Mr. Trampush expresses a similar concern at pp. 5-7 of his testimony. Mr. Tade  
3 notes that "the primary objective of a regulation in a competitive environment should be  
4 to foster an equal opportunity to compete among market providers without pre-ordaining  
5 marketplace outcomes." I agree with this statement if, but only if, it is clarified to mean  
6 that each provider has an equal opportunity to compete on its own merits; I disagree with  
7 any suggestion that a goal of regulation in this context should be to attempt to equalize  
8 the position of the carriers by artificially removing advantages any carrier might have  
9 over others.

10 Mr. Tade goes a step further and argues that "truly effective competition can emerge only  
11 when all sellers in an industry enjoy the same freedoms, bear the same responsibilities  
12 and endure the same constraints." This is simply not how competitive markets work.  
13 The reality is that different providers face different freedoms, responsibilities, and  
14 constraints. I doubt that Mr. Tade would agree for all of the regulatory constraints faced  
15 by Nextel Partners as a FCC-licensed wireless provider to be applied to Citizens, nor  
16 would it be meaningful to do so. The key to a successful regulatory structure that will  
17 permit efficient entry into a market previously characterized by monopoly supply is a  
18 mechanism that will prevent, or at least mitigate, any artificial advantages that one carrier  
19 might possess. As I describe below in some detail, this mechanism is in place.

20 **Q: MR. TADE (PP. 4, 11) ARGUES THAT NEXTEL PARTNERS SHOULD BE REQUIRED TO**  
21 **OFFER "UNLIMITED FREE LOCAL USAGE" BEFORE BEING DESIGNATED AS AN ETC. DO**  
22 **YOU AGREE?**

23 A: No, for several reasons. First, Citizens does not offer "unlimited free local usage." It  
24 does offer a rate plan to customers that rolls usage into the monthly line rate, so that

1 Citizens recovers usage and local loop costs on a bundled basis. I strenuously disagree  
2 with Mr. Tade's theory that anything that is not charged for separately is "free." Under  
3 that theory, may car came with a "free" stereo, "free" seats, and a "free" engine for that  
4 matter. Paying a bundled priced doesn't mean the car manufacturer didn't recover its cost  
5 of these different components. In contrast, Nextel Partners' service plans permit the  
6 customer to pay for the amount of usage he or she wants, rather than the average amount  
7 of usage that Citizens decides to include in its monthly rate.

8 Second, it is meaningless to compare local calling prices for Citizens and Nextel partners,  
9 because the local calling areas are not the same. As is the case with the volume of local  
10 usage, Nextel Partners – unlike Citizens – gives customers significant flexibility in  
11 determining the effective size of their "local" calling area.

12 Third, the FCC has considered a requirement to require "unlimited" local usage as a part  
13 of the nine supported services, but has chosen not to do so. This proceeding is not the  
14 proper forum for Citizens to make a change to the list of services that an ETC must  
15 provide. Mr. Tade correctly notes that an ETC designation creates obligations for the  
16 requesting carrier. Nextel Partners has committed to meet those requirements.

17 Finally, this kind of regulatory requirement is unnecessary because it is duplicative of  
18 market constraints. If end user customers do not consider Nextel Partners' service  
19 offerings to be affordable and a good value (considering price, quality, mobility, and  
20 features), they will not subscribe to them. Federal high-cost support is available on a per-  
21 line basis for customers actually served. If customers do not subscribe to its services,  
22 Nextel Partners will not receive support whether or not is has been designated as an ETC.

1 If customers demand an "unlimited" local calling plan, I expect that Nextel Partners will  
2 respond.

3 The competitive market can be relied upon to effectively constrain a CETC's prices and  
4 services: if the CETC's offering does not meet customer expectations, end users will not  
5 purchase the service and the CETC will receive no federal support.

6 As recently noted by the Regulatory Commission of Alaska:

7 The FCC has previously rejected rural incumbent carriers' suggestions to  
8 adopt eligibility criteria beyond those set forth in Section 214(e) to prevent  
9 competitive carriers from attracting only the most profitable customers,  
10 providing substandard service, or subsidizing unsupported services with  
11 universal service funds. The FCC concluded that the statutory  
12 requirements limiting ETCs, and requiring them to offer services  
13 throughout the area and to use the support only for the intended services,  
14 were sufficient. Similarly, we find little evidence that further protections  
15 are needed to protect [the ILECs'] place in the market.<sup>8</sup>

16 **Q: DO THE ILEC WITNESSES ARGUE FOR OTHER CONSTRAINTS, BEYOND THOSE REQUIRED**  
17 **BY LAW, TO BE APPLIED TO NEXTEL PARTNERS?**

18 A: Yes. Mr. Trampush (pp. 10-16) and Mr. Tade (pp. 8-9) make similar assertions regarding  
19 Nextel Partners' requirements for designation. Both suggest that Nextel Partners be  
20 required to submit business plans, investment timetables and other such analyses which  
21 are well outside of the scope of this proceeding and are not required by the FCC. Nextel  
22 Partners has committed to serving the whole of its FCC license area with universal  
23 services, and has committed to meet all Federal and State requirements with regards to  
24 service area and service quality.

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<sup>8</sup> *Order No. 10 in Docket No. U-02-39*, Regulatory Commission of Alaska, August 28, 2003 approving the application of Alaska DigiTel, LLC for ETC designation.

1 As explained in detail later in my testimony, a CETC's use of funds is closely monitored  
2 on several levels. If, as a part of its annual recertification, the Commission were to  
3 conclude that Nextel Partners is not using these funds as intended, it could request a  
4 change in the company's plans or decide not to recertify the company as an ETC. The  
5 production of extensive planning records prior to certification creates delay and causes  
6 the applicant to incur significant costs to develop detailed plans for an area in which it  
7 may or may not receive designation.

8 **Q: AT NUMEROUS PLACES IN THEIR TESTIMONY MESSRS. TRAMPUSH (PP. 7-11, 16-17) AND**  
9 **TADE (PP. 7-10) EXPRESS CONCERNS ABOUT "CREAMSKIMMING" OR "CHERRY**  
10 **PICKING." DO YOU HAVE A RESPONSE TO THEIR CONCERNS?**

11 **A:** Yes. After all of the discussion about "asymmetrical regulation," it appears that Mr. Tade  
12 and Mr. Trampush are mostly concerned about what they believe is the ability of  
13 "unregulated competitors to target only [the ILEC's] most profitable customers, while  
14 leaving the incumbents with the COLR obligation for the very highest cost customers"  
15 (Trampush, p. 7). There are several reasons why the Commissions (or the ILECs, for that  
16 matter) need not worry about such an outcome.

17 Mr. Trampush claims (p. 17) Nextel Partners has engaged in "preferential targeting of a  
18 select portion of a rural telephone company's customers," "has no intention of providing  
19 ubiquitous universal service throughout the rural telephone company service areas for  
20 which it seeks an ETC designation," and has filed only in "Citizens' most heavily  
21 populated and lowest cost exchanges."

22 Taking the factual matter first, a review of Citizens' plan for disaggregation shows that  
23 Mr. Trampush is just plain wrong: rather than requesting ETC designation only in  
24 "Citizens' most heavily populated and lowest cost exchanges, " Nextel Partners is actually

1 requesting designation in exchanges that cover the spectrum of Citizens' network costs.  
2 Attachment 1 to Nextel Partners' application lists the 12 Citizens exchanges for which  
3 Nextel partners is seeking designation. Citizens' Plan for Disaggregation<sup>9</sup> shows that 5 of  
4 these exchanges represent Citizens' lowest cost exchanges, 2 represent the medium cost  
5 category, and 5 represent the areas in which Citizens incurs the highest cost to provide  
6 service. In reality, Nextel Partners is seeking designation in both high and low cost areas.  
7 There is absolutely no evidence of "preferential targeting" of customers.  
8 Even if Nextel partners were to attempt to engage in such a targeted entry strategy, the  
9 fact that Citizens has disaggregated support would effectively prevent such a strategy  
10 from being successful. Nextel partners, like any ETC, would receive support based on  
11 the disaggregated costs of the area being served. In Citizens' high cost areas, the  
12 available support is \$74.81 per line. In contrast, in Citizens' low cost areas, the available  
13 support is only \$4.27 per line. *Any carrier that selectively entered only low cost areas*  
14 *would also be selectively entering the area with the lowest level of available USF*  
15 *support.* Of course, this issue is moot, because Citizens' own cost data show that Nextel  
16 Partners is seeking to enter as many high cost exchanges as low cost exchanges.  
17 The FCC's rules provide an effective means of preventing such activity. 47 C.F.R.  
18 § 54.315 allows rural ILECs to disaggregate universal service support in order to better  
19 reflect geographic cost differences. Citizens has availed itself of this opportunity. This  
20 disaggregation renders any potential "creamskimming" impossible. Finally, the

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<sup>9</sup> This information was produced in discovery.

1 "creamskimming" or "cherry picking" concern, while serving as the mantra of the rural  
2 ILECs, is vastly overblown as a practical reality, a fact I will explain further below.

3 **Q: DID THE ILECS IN THIS CASE ACKNOWLEDGE THE POSSIBILITY OF SUPPORT**  
4 **DISAGGREGATION TO ALLEVIATE THE POTENTIAL FOR "CREAMSKIMMING"?**

5 A: No. Both Mr. Trampush and Mr. Tade refer to disaggregation, but it is clear from their  
6 testimony that they are failing to distinguish between disaggregation of USF support and  
7 redefinition of an ILEC service area. Mr. Tade states (p. 9) that "Clear Talk, on the other  
8 hand, appears to be proposing that CTC-Idaho's study area be disaggregated, for ETC  
9 service area purposes" and later that "both Clear Talk and Nextel Partners are seeking to  
10 have certain of CTC-Idaho's study area disaggregated and established as separate ETC  
11 service areas." Mr. Trampush makes a similar statement that "Nextel Partners is simply  
12 asking the Commission to disaggregate Citizens' service area so it can receive USF  
13 support but avoid service territory to obviously views as unprofitable."

14 Section 54.315 permits ILECs to disaggregate support in order to reflect demonstrable  
15 cost differences between different parts of its service areas. Once this disaggregation  
16 takes place, a wireless carrier such as Nextel Partners, seeking to serve only a portion of  
17 an ILEC study area because the boundaries of its FCC license are different from the  
18 historical ILEC boundaries, will not receive support based on the overall average of the  
19 ILECs costs, but instead will receive support that reflects the cost of serving that area.

20 **Q: IS THERE ANY REASON TO EXPECT NEXTEL PARTNERS TO HAVE THE ABILITY TO**  
21 **"CREAMSKIM," WHETHER OR NOT ITS REQUEST FOR A SERVICE AREA DEFINITION**  
22 **DIFFERENT FROM THE CITIZENS STUDY AREA IS ULTIMATELY GRANTED?**

23 A: None whatsoever. As noted above, the available evidence makes it abundantly clear that  
24 Nextel partners is not attempting to engage in such a strategy. Such a strategy, even if  
25 attempted by a CETC, would fail.

1 As a practical matter, even a carrier that diverts considerable resources away from its  
2 business operation in order to attempt to exploit opportunities for geographic  
3 "creamskimming" would find it almost impossible to successfully accomplish its  
4 objective. In order to be successful, the new entrant would need to incur costs in the  
5 same way as the ILEC; it is only if the "high cost" and "low cost" areas of the ILEC and  
6 new entrant match that "creamskimming" is even theoretically possible, and as all parties  
7 will agree wireless carriers have a cost structure that is different from that of wireline  
8 carriers. An additional practical problem is that – when examined closely – network  
9 costs do not vary in a predictable way. My review of hundreds of network costs study  
10 reveals an inescapable truth: it is impossible to conclude that network costs vary based on  
11 any set of broad criteria. Costs vary on a very discrete geographic scale, making it  
12 difficult (if not impossible) to identify individual customers that are "low cost" and  
13 thereby represent a "creamskimming" opportunity.

14 Nextel Partners is not attempting to define its service area at this level of geographic  
15 detail; it is seeking to define its ETC service area by "redefining" the Citizens service  
16 areas at the level of the wire center. Nextel Partners would have an obligation to serve  
17 this geographic area unless its FCC license prevents it from doing so. As the FCC has  
18 recently concluded, a commitment by a wireless CETC to provide the supported services  
19 throughout its licensed service area, even when "the contour of its CMRS licensed area  
20 differs from the existing rural telephone companies' study areas," indicates that the CETC

1 is not seeking to "creamskim" and any such "creamskimming" concerns are thereby  
2 minimized.<sup>10</sup>

3 **Q: MR. TRAMPUSH BELIEVES THAT WIRELESS SERVICE IS "COMPLIMENTARY" TO**  
4 **WIRELINE SERVICE, DOES NOT REPRESENT MEANINGFUL COMPETITION, AND**  
5 **THEREFORE THAT WIRELESS CARRIERS SHOULD NOT BE GRANTED ETC DESIGNATION.**  
6 **DO YOU AGREE WITH HIS ASSESSMENT?**

7 A: No. As an initial matter, this is not Mr. Trampush's decision to make. As he correctly  
8 notes at p. 6 of his testimony, the FCC has implemented a principle that "requires that  
9 universal service support mechanisms and rules neither unfairly favor nor disfavor one  
10 technology over another." Mr. Trampush's opinions regarding the kind of technology  
11 that CETCs ought to be using add nothing to this discussion.

12 Mr. Trampush's makes two main observations: (1)"wireless service is complementary to  
13 wireline service with respect to basic local service" (p. 27) and (2) "rural Idaho customers  
14 are not substitution their wireline phones for wireless phones to any major extent." (p. 28)  
15 These two comments highlight a very important point regarding rural competition. One  
16 of the main goals of the Act and subsequent orders was to facilitate entry of competitive  
17 carriers to rural, insular and high-cost areas so that customers would have meaningful  
18 competitive choices, furthering the goal of rural/urban parity. This ETC proceeding is  
19 about precisely that, facilitating competition. Mr. Trampush's observation represents the  
20 kind of circular logic that has made rural competitive entry such an elusive goal. He  
21 claims that wireless carriers should not be allowed to compete for primary  
22 telecommunications service in rural areas because they are not competing for primary

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<sup>10</sup> *Memorandum Opinion and Order*, CC Docket No. 96-45, released November 27, 2002 [DA 02-3181, paragraphs 27-28.



1 telecommunications service in rural areas. Only by providing access to funding will  
2 wireless carriers be able to complete the network buildouts and service-quality upgrades  
3 that *could* yield substitution. Making that scenario possible is central to the stated  
4 purpose of the Act and would support the kind of "competitive parity" that the ILECs  
5 argue for throughout their testimony.

6 Recent events also play a role. Many customers have reported a reluctance to substitute  
7 wireless service for their current wireline service because they could not keep their same  
8 telephone number. Wireline to wireless number portability would eliminate this barrier,  
9 making substitution much more likely.

10 **Q: MR. TRAMPUSH ARGUES THAT BECAUSE SOME WIRELESS CARRIERS PROVIDE SOME**  
11 **SERVICES IN SOME RURAL AREAS WITHOUT SUPPORT, NEXTEL PARTNERS SHOULD NOT**  
12 **RECEIVE SUPPORT. DO YOU AGREE WITH HIS OBSERVATIONS?**

13 A: No. At p. 26 of his testimony Mr. Trampush states that "in many cases these CMRS  
14 providers have been offering mobile service to 5 to 10 years. Even more significantly,  
15 these carriers have been offering their services since inception without high-cost  
16 support." He also states (p. 5) "there is no shortage of wireless competitors already  
17 operating in Idaho's rural telephone company service areas." There is no dispute that  
18 *some* providers are currently providing *some* services in *some* of the areas served by rural  
19 ILECs in Idaho, but that fact has no bearing on this proceeding. Nextel Partners is  
20 making a commitment (or more accurately, seeking the ability to make a commitment) to  
21 provide the supported services throughout these service areas in *direct competition* with  
22 the rural ILECs; something that, without USF support, it could not do.

23 A proper consideration of this issue requires more than the cursory observations of Mr.  
24 Trampush. It is true that wireless companies, including Nextel Partners, are providing

1 services these areas; this does not mean that the market is competitive with respect to the  
2 services Nextel Partners is committed to offering. No other company has committed to  
3 offer supported universal services throughout these areas, and no other carrier is  
4 attempting to provide consumers with a wireless service at a level of quality that can  
5 compete directly with the current wireline local service offerings.

6 An understanding of why the Trampush analysis fails requires a more substantive look at  
7 how the rural ILECs originally entered these markets and how competitive carriers seek  
8 to do so now. The rural ILECs in Idaho did not begin by providing service with a  
9 network whose reach extended throughout their current service areas; they began by  
10 constructing facilities where it was most feasible and then expanding those facilities over  
11 time – *while receiving implicit or explicit universal service support*. At no time was that  
12 support withheld because the rural ILEC was "already providing" wireline service in  
13 some part of these areas. Mr. Trampush acts as if the existing rural ILEC networks  
14 sprang forth from the head of Zeus in their current form and with their current geographic  
15 coverage. This did not happen: rural ILECs expanded and upgraded their wireline  
16 networks over time while receiving support. At p. 12, Mr. Trampush argues that, with  
17 respect to buildout plans, potential CETCs should be treated in a manner consistent with  
18 "the incumbent when it was originally certificated." The same logic applies here; the  
19 incumbents were not required show pre-existing ubiquitous coverage, and at no time  
20 were the incumbents told that their access to USF support would be limited because they  
21 were already providing service to some customers in the area.

22 The entry and expansion of a competitive carrier such as Nextel Partners is not  
23 fundamentally different. Nextel Partners has demonstrated that it can and does provide

1 services throughout much of the area for which it seeks ETC designation. ETC  
2 designation will enable Nextel Partners to take the next step and offer the supported  
3 services throughout these areas in direct competition with the ILECs' wireline services.  
4 Network buildout will improve service quality and coverage to the point that rural  
5 consumers may find wireless service to be an acceptable alternative for the rural ILEC's  
6 wireline service. Such an outcome is fully consistent with the stated objectives of the  
7 Act.

8 **Q: BOTH MR. TRAMPUSH AND MR. TADE ARGUE THAT NEXTEL PARTNERS SHOULD NOT**  
9 **BE DESIGNATED AS AN ETC BECAUSE IT COULD USE THESE FUNDS IN AN IMPROPER**  
10 **MANNER. DOES THIS ARGUMENT HAVE ANY MERIT?**

11 A: No, these arguments have no factual foundation whatsoever and ignore the multiple  
12 safeguards in place. To make such a suggestion without evidence of any kind is  
13 irresponsible.

14 Mr. Tade states (p. 15) that "there is little or no accountability to ensure possible monies  
15 received by the applicants from the federal USF would be used to construct infrastructure  
16 in rural Idaho." He fears that there is nothing to "prevent Nextel Partners from receiving  
17 distributions from the federal fund based on service provided to rural Idaho and using  
18 those distributions to construct infrastructure in metropolitan Boise, or worse, in other  
19 states."

20 Apparently Mr. Tade is unaware of exactly how the mechanism works. The use of  
21 federal support funds by § 254 (e) is for "the provision, maintenance, and upgrading of  
22 facilities and services for which the support is intended." To ensure that the use of  
23 support funds by any ETC (incumbent or competitor) complies with this requirement, the  
24 Universal Service Administration Company ("USAC") has the authority to conduct audits

1 and does so on a regular basis. Furthermore, this Commission has the ability to ensure  
2 that any funds received by Nextel Partners or any other ETC are being used appropriately  
3 through the annual ETC recertification process. There is no reason to assume that this  
4 will not take place. Finally, wireless carriers, including Nextel Partners, are licensed by  
5 the FCC, which has the authority to investigate the operation of wireless companies and  
6 institute punitive measures if it deems necessary. In this light, Mr. Trampush's statement  
7 (p. 29) that wireless companies are "unregulated" is utter nonsense. Mr. Tade's argues (p.  
8 15) that there should be requirements that the funding is used only "to construct  
9 infrastructure in rural Idaho." That requirement already exists, and Nextel Partners has  
10 committed to using Universal Service Funds for exactly that.

11 **Q: MR. TRAMPUSH CLAIMS (P. 29) THAT USF MONIES WILL PROVIDE "A WINDFALL**  
12 **PROFIT" TO WIRELESS ETCs. WHAT IS YOUR RESPONSE TO HIS CLAIM?**

13 A: There are two equally important points to be made about Mr. Trampush's "windfall"  
14 claim. First, even if Nextel Partners' per-line costs prove to be lower than those of the  
15 rural ILECs,<sup>11</sup> no "windfall" can occur: the rules specifically limit Nextel Partners' use of  
16 these funds to the investment in, and operation of, network facilities in the high cost area.  
17 Second, if one assumes the possibility of a "windfall" and then recognizes that such a  
18 "windfall" will only occur if Nextel Partners' per-line costs are indeed lower, the worst  
19 outcome that can be realized is that the carrier that all parties agree is a more efficient  
20 provider will be encouraged to build out its network on an accelerated basis. Once this

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<sup>11</sup> Mr. Trampush makes this assumption, but completely omits an explanation of why a mechanism that encourages investment by a lower cost/more efficient provider is not in the public interest (or conversely, why a decision to fund the higher cost/less efficient provider into perpetuity represents sound public policy).

1 buildout is complete, support can be based on this more efficient network (and ultimately  
2 limited, if appropriate, to this single efficient carrier) thereby minimizing the size of the  
3 fund over the long run. Nextel Partners has committed, as it must, to use the USF support  
4 it receives to build out infrastructure and operate facilities in these areas, a result that is  
5 fully consistent with the purpose of the Act and the interests of Idaho consumers.

6 In a direct contradiction of Mr. Trampush's testimony, Mr. Tade argues (pp. 8-9)  
7 "effective competition requires that all firms must compete on the merits of their  
8 respective efficiencies." Unlike Mr. Trampush, who sees areas in which "a wireless  
9 ETC's costs are less than the incumbent LEC's," Mr. Tade sees the incumbent LECs (pp.  
10 8-9) as the more efficient providers. If Mr. Trampush is right, the designation of Nextel  
11 Partners as an ETC will mean that the a more efficient provider will receive the necessary  
12 support to serve the area, and over the long run, demands on the fund will decrease as a  
13 result. If Mr. Tade is correct, then Nextel Partners would be unable to compete, even  
14 after receiving the same per-line support as the ILEC. Recognition of this fact would  
15 cause Nextel Partners not to seek entry into the market.

16 **Q: MR. TRAMPUSH ARGUES THAT NEXTEL PARTNERS SHOULD NOT BE DESIGNATED AS AN**  
17 **ETC BECAUSE OTHER CARRIERS WILL THEN HAVE NO CHOICE BUT TO SEEK SUCH A**  
18 **DESIGNATION. IS HE RIGHT?**

19 **A:** No. At p. 31, Mr. Trampush argues that "if the Commission grants these insupportable  
20 applications, it is difficult for me to imagine any grounds that will suffice to deny  
21 subsequent applications ... virtually all of the wireless carriers operating in Idaho will  
22 apply for, and be granted, ETC status and federal USF support." He goes on to say that  
23 "the result will be the creation of a whole new industry subset, founded on competitive  
24 business principles, but rather on the desire to maximize regulatory subsidies." This

