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IDAHO PUBLIC
UTILITIES COMMISSION

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Company of Idaho

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
IAT COMMUNICATIONS, INC., d.b.a.
NTCH-IDAHO, INC. OR CLEAR TALK FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER.

Case No. GNR-T-03-08

IN THE MATTER OF THE APPLICATION
OF NPCR, INC. d.b.a. NEXTEL PARTNERS
SEEKING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER THAT
MAY RECEIVE FEDERAL UNIVERSAL
SERVICE SUPPORT

Case No. GNR-T-03-16

**CITIZENS TELECOMMUNICATIONS
COMPANY OF IDAHO'S POST HEARING
BRIEF**

Citizens Telecommunications Company of Idaho ("Citizens") submits this Brief to the Idaho Public Utilities Commission ("Commission") in response to the Applications of IAT Communications, Inc. dba Clear Talk ("Clear Talk") and NPCR, Inc. dba Nextel Partners ("Nextel") for designation as Eligible Telecommunications Carriers ("ETC") in certain rural Idaho operating territories served by: Albion Telephone Company, Filer Mutual Telephone Company, Farmers Mutual Telephone Company, Fremont Telephone Company, Mud Lake

**CITIZENS TELECOMMUNICATIONS
COMPANY OF IDAHO'S POST HEARING BRIEF- 1**

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Telephone Cooperative, Project Mutual Telephone Cooperative and Citizens.¹ Citizens currently provides local phone service in its Study Area consisting of eighteen rural exchanges in Idaho, which include: Aberdeen, Carey, Cascade, Donnelly, Elk City, Fairfield, Garden Valley, Homedale, Horseshoe Bend, McCall, Marsing, New Meadows, Parma, Riggins, Springfield, Sweet, White Bird, and Wilder. Citizens is a rural incumbent local exchange carrier, as defined by 47 U.S.C. Section 153 of the Federal Telecommunications Act of 1996. Both Clear Talk and Nextel seek to serve only a portion of the rural telephone companies' Study Areas. The primary purpose of the applications are to qualify the applicants for the receipt of federal universal service funds ("USF"). Tr. 13, LL. 23-25; Tr. 839, LL. 21-25. However, neither applicant has decided not to seek state USF funds in the future. Tr. 12, L. 5, Tr. 47, L. 1-9.

Before designating Clear Talk and Nextel as an ETC in the service territories of rural incumbent local exchange carriers including Citizens, the Commission must find that they will provide the basic services as described by the FCC throughout the area for which it will be designated as an ETC **and** that granting ETC status is in the "public interest." 47 C.F.R. § 54.201(c)-(d). As the Commission considers each of the applications to be designated as an ETC, there are at least three important points that should be considered:

1. Whether Clear Talk and Nextel have established that it is in the public interest for each of them to be designated as an ETC;
2. Whether Clear Talk and Nextel's intended use of federal funding is consistent with the purpose of USF support; and

¹ For the sake of brevity, arguments made in the Idaho Telephone Association's Post Hearing Brief are also incorporated by reference.

3. Whether the Commission should modify Citizens' Idaho USF Service Area to accommodate requests by Clear Talk and Nextel.

I. CLEAR TALK

A. Clear Talk Has Failed To Establish that Granting It ETC Status Is in the Public Interest.

Section 254(e) of the Federal Telecom Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”² Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.³ Under section 214(e)(2), the Commission may, with respect to an area served by a rural telephone company, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1) and the Commission determines that the designation is in the “public interest.”⁴ As part of this “public interest” determination, the Commission should weigh the cost of designating Clear Talk as an ETC against the benefits expected from such a designation.

The existing service packages include the components of basic service outlined by the FCC in 47 C.F.R. § 54.101(a). If designated as an ETC, Clear Talk intends to continue to provide wireless service in its existing customer area and any new customers that subscribe to service in much the same way it would provide service today. In other words, the federal

² 47 U.S.C. § 254(e)

³ 47 U.S.C. § 214(e)(2).

⁴ 47 U.S.F. § 54.201(c)-(d).

universal support funding will not be supporting basic universal service offerings, but instead will be subsidizing Clear Talk's current service offerings.

As a result of Clear Talk's decision to continue to offer its existing service packages to its existing customer base and new customers at existing prices, it is unlikely that its designation as an ETC will promote competition and benefit consumers by increasing customer choice, innovative services, or new technologies. Equally important, competition already exists in the area Clear Talk proposes to receive ETC designation. Tr. 469, LL. 1-19.

Clear Talk is already competing with incumbent local exchange carriers for customers, with their current service wireless offerings and without federal universal support. Customers in the areas where Clear Talk is seeking ETC designation currently have the choice to receive wireless service from Clear Talk and will continue to do so regardless of whether Clear Talk receives an ETC designation.

Moreover, Clear Talk has not presented specific evidence or commitments that it will deploy innovative services or new technologies beyond the services it already offers in its proposed ETC area. Even its four-digit dialing was extremely limited in application. Tr. 464, LL. 3-14.

The Commission has a responsibility to consider public interest issues associated with designating Clear Talk as an ETC and is not required to approve Clear Talk's application simply because minimal criteria have been met. Before granting Clear Talk's request for ETC designation, the Commission must find that such designation is in the public interest. It appears the costs of federal USF support (which Idaho subscribers must fund) clearly outweigh the illusory benefits of designating Clear Talk as an ETC. Wireless ETC's share of the federal

fund is growing at a very fast rate. Tr. 466, LL. 18-25; Tr. 467, LL. 1-15. Absent significant modifications to Clear Talk's proposal to be designated as an ETC, Clear Talk's request that it be designated as an ETC in the proposed service territory is not in the public interest.

Clear Talk claimed to have lower prices, but it would not guarantee that it would not increase its rates. Tr. 462, LL. 18-23. Clear Talk argued that it had local employees as a public benefit but would not guarantee to keep those jobs in Idaho. Tr. 463, LL. 10-18.

B. Clear Talk Has Failed To Demonstrate that It Is Capable and Committed to Offering the Supported Services Throughout the Entire Area in Which It Seeks ETC Designation.

Pursuant to section 214(3)(1) of the Federal Act, a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁵ Of importance, other than its automatic designation as an ETC in the Idaho Qwest service area, Clear Talk has not been granted ETC status elsewhere. Tr. 381, LL. 20-23.

The FCC has recently made it clear, that although a telecommunications carrier's inability to provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC, the carrier must make a "reasonable demonstration . . . of its capability and commitment to provide universal service. . . ."⁶ While Clear Talk has indicated that it will provide service to customers in the areas where it is designated as an ETC, it has

⁵ 47 U.S.C. § 214(e)(1).

⁶ See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Comm'n, Declaratory Ruling, CC Docket No. 96-45, FCC Rcd 15168 at 15178, para. 24 (2000) (Declaratory Ruling), pet'n for recons. pending.*

offered no reliable assurances of how it will accomplish this or what the timetable would be for enhancing its existing network to provide the required service throughout its ETC territory.

It is also clear that Clear Talk will not be providing coverage in all areas where wireless service coverage is currently not available. There are several sites that will remain without coverage, even if Clear Talk constructs additional towers. *See* Curry Exhibits. For example, only portions of the Citizens exchange, Fremont exchange, and Project Mutual exchange are proposed to be served. Tr. 504, LL. 20-25; Tr. 505; Tr. 506, LL. 1-25. In its pre-filed testimony and during the hearing, Clear Talk did not make any commitment as to how long, in terms of time, it would take to provide coverage in the entire area for which Clear Talk seeks ETC status. Without an estimate of time to construct or an analysis of the number of tower cell sites needed, or anticipated costs to provide service in its proposed ETC territory, Clear Talk's capability and commitment to offer the supported services throughout the entire ETC area is questionable.

The most revealing testimony regarding the uncertainty of Clear Talk's commitment to provide service was in response to cross-examination questions when it admitted that generally only areas "that will bring us 250 customers warrants a cell site." Tr. 451, LL. 6-11 and Tr. 473, LL. 2-23. Based on this testimony, it is clear that customers requesting service from Clear Talk may be subjected to varying delays of years if a new cell site must be constructed, or service may never be made available to the requesting customer. Clear Talk has not, and apparently cannot, make a commitment regarding any more specific timetable for providing service to customers requesting service. The Utah Public Service Commission found

this failure to make a commitment of importance in rejecting the Western Wireless application. *WWC Holding Co. v. Public Serv. Commission* (Utah S. Ct. Mar. 5, 2002).

Assuming for the sake of argument only that Clear Talk should be granted ETC status, the Commission should impose service quality standards associated with the provisioning of service in a specified timeframe as a condition of ETC status. Tr. 470, LL. 4-22. As indicated during cross-examination, the FCC has indicated that wireless complaints have increased 24% in its latest quarterly report and consumer groups report that cellular complaints were part of the fastest growing category of complaints. Tr. 132, LL. 3-24.

C. Clear Talk Should Not Be Designated as an ETC in Any Portion of a Wire Center It Will Not Fully Serve.

Clear Talk seeks to redefine the service territories (for universal service purposes) of the rural local exchange carriers that its proposed ETC service territory overlays. Clear Talk asks that this redefinition be done at the sub-wire center level.

1. Citizens' Study Area.

Citizens has one Study Area in Idaho. Clear Talk does not seek ETC designation for Citizens' Study Area outside its licensed area. Clear Talk proposes to serve only a portion of the Aberdeen exchange. Tr. 577, LL. 21-23. While it could have purchased additional licenses either in the original auction or from holders of existing licenses and/or it could have entered joint ventures to increase its service area (Tr. 385, LL. 17-25; Tr. 386, LL. 1-20), Clear Talk has arbitrarily decided to serve only a portion of the exchange. Since Clear Talk proposes that the service area of Citizens be redefined, for ETC service area purposes, below the exchange level, to only portions of the Aberdeen exchange, some of the customers in this wire center will be

eligible to receive Clear Talk's service with federal USF support and the other customers in the wire center will not.

2. Clear Talk has not provided justification to redefine Citizens' Service Area.

Citizens and the other ILECs involved in this case are rural incumbent local exchange carriers. The Federal Telecommunications Act requires the Commission and the FCC to act in concert if the Study Areas for areas served by rural carriers is to be altered.

Section 214(e)(5) states:

In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until *the Commission and the States*, after taking into account the recommendations of a Federal-State Joint Board instituted under section 401(c), establish a different definition of service area for such company.⁷

The plain language of section 214(e)(5) dictates that neither the Commission nor the FCC may act alone to alter the definition of service areas served by rural carriers.⁸ In addition, the language "taking into account" indicates that the Commission and the FCC must each give full consideration to the Joint Board's recommendation and must each explain why they are not adopting the recommendations included in the Recommended Decision of the Joint Board

⁷ 47 U.S.C. § 214(e)(5) (emphasis added). A "rural telephone company" is defined at 47 U.S.C. § 153(37).

⁸ 47 U.S.C. § 214(e)(5). The term "study area" describes a geographic area or group of exchanges for which a telephone company maintains and reports the costs of providing service. The term "service area" in the context of ETC issues, describes the geographic area which a state commission assigns to an ETC for purposes of determining universal service obligations and support mechanisms. 47 C.F.R. § 51.207(a).

convened to provide recommendations with respect to federal universal service support mechanisms.⁹

The service area redefinition requested by Clear Talk for the rural telephone company exchange that it will only partially serve raises several important issues involving the mismatch of costs and federal support amounts, increased administrative burdens, and consumer confusion issues. Clear Talk's request for ETC designation to match its licensed coverage area gives no consideration to long standing exchange boundaries approved by the Commission and will require ILECs, such as Citizens, to disaggregate costs at a sub-exchange (e.g., sub-wire center) level. Clear Talk has failed to establish that the benefits of redefining Citizens and other rural ILEC study areas below the wire center level are justified or in the public interest.

3. Mismatch of costs and federal support amounts.

As noted by the Federal-State Joint Board on Universal Service, secondary ETC designations below a rural LEC's study area raises concerns over possible cream-skimming activities or the mismatch of costs associated with the area upon which the federal funding amounts are based and the area the carrier actually serves. The Federal-State Joint Board

⁹ See 47 C.F.R. § 54.207(d)(1). When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, the Joint Board made the following observations: (1) the potential for "cream skimming" is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area; (2) the Telecommunications Act of 1996 (1996 Act), in many respects, places rural telephone companies on a different competitive footing from other local exchange companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*Recommended Decision*).

explained that requiring competitive ETCs to serve a rural ILEC's entire study area reduces these concerns:

Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.¹⁰

Clear Talk is proposing to provide and incur costs to provide service for a geography that does not match the way the federal support amounts are calculated and disbursed. As noted above, Clear Talk is proposing to serve only a portion of Citizens' exchange. Citizens has disaggregated its federal support to the wire center level, for federal universal service support purposes and the Commission accepted these disaggregation plans. The amount of support available now for each Citizens exchange is based upon the estimated cost for serving that entire exchange, not just a portion of it. *See* Exhibit 110.

As a result of this averaging of all costs in a wire center, the cost of serving some customers in the exchange is lower than the average cost of serving all customers in the wire center. Conversely, the cost of serving some customers in the exchange is higher than the average cost of serving all customers in the wire center. Nextel's witness, Mr. Wood, recognized this point. Tr. 324, LL. 4-25.

Allowing competitive carriers to receive ETC designation for only a part of an exchange creates a situation in which a carrier may only serve the least expensive section of a wire center but receives federal support based on exchange-wide costs. Tr. 496, LL. 13-20;

¹⁰ *Recommended Decision* at para. 172.

Tr. 569, LL. 1-10. If Clear Talk is designated as an ETC in part of the exchange it intends to only partially serve, there will be a mismatch between the area upon which the federal funding amounts are based and the area Clear Talk actually serves. Tr. 589, LL. 8-22.

The Federal-State Joint Board recognized that if competitors are allowed to serve only a portion of a rural telephone company's study area, the competitor may only serve the least expensive customers and, thereby, "undercut the ILEC's ability to provide service throughout the area."¹¹ Because Clear Talk is proposing to serve only part of certain rural wire centers, it may be serving only the lower costs portions of the exchanges in which it seeks ETC designation. If the Commission grants the Clear Talk application, it will be very hard to deny future ETC applications which define service areas in a variety of ways.

4. Increased administrative burden.

To minimize the potential windfall to Clear Talk caused by the mismatch of costs and federal support it will be necessary for Citizens to further disaggregate its costs. Sub-exchange disaggregation will create additional and potentially significant administrative burdens for rural LECs. Maintaining records on certified ETCs will be more difficult when the ETC service areas for competing carriers are not designated along consistent boundaries. This problem will be further exacerbated if multiple wireless carriers (like Clear Talk), with different licensed coverage areas, seek to serve only parts of a wire center. At some point, other wireless providers will seek to be designated as an ETC in different portions of the Citizens exchanges to

¹¹ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd para. 189 (1997) (*Universal Service Order*).

match its unique territory. Ultimately, this can result in disaggregation, which is unworkable from a cost calculation and universal service funding perspective.

The Federal-State Joint Board has recognized that rural ILECs will be subjected to the increased administrative burdens associated with calculating costs and universal service support below the study area level:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs providing universal service by a rural telephone company should be based, at least initially, on that company's embedded costs. Rural telephone companies currently determine such costs at the study-area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.¹²

In order to accommodate Clear Talk's request for service area redefinition below the wire center level, Citizens would be required to undertake a cost study analysis of the costs to provide service in different parts of the Aberdeen exchange. Citizens' witness Tade explained in detail some of the additional costs and studies that could be required. Tr. 621, LL. 20-25; Tr. 622, LL. 1-25; Tr. 623, LL. 1-25; Tr. 624, LL. 1-6; Tr. 632, LL. 12-25; Tr. 633, LL. 1-9. As indicated by Mr. Tade, Citizens does not believe that there is currently a reliable cost proxy model available to calculate the cost of providing service below the wire center level. In summary, Clear Talk has provided no justifications for the Commission to impose increased administrative burdens on Citizens associated with undertaking additional cost study analysis and the further disaggregation of universal services support below the wire center level at this time.

¹² *Recommended Decision* at para. 174.

5. Customer confusion.

As part of the increased administrative burden, rural ILECs will be required to respond to and address customer inquiries regarding the inconsistencies between Clear Talk's service offerings and the rural ILEC's offerings in the wire centers Clear Talk is proposing to only partially serve.

Customers may have a difficult time determining which carriers are authorized ETCs for their location when the service boundaries of the carriers bear no relationship to each other. Under Clear Talk's proposal, a particular customer will only receive Clear Talk service if their billing address is within Clear Talk's wireless license service coverage area.

Customers in small rural communities may be especially confused if some residents can obtain service from Clear Talk that is advertised in the local area and eligible for federal support, while other residents of the same community cannot obtain the service. Similarly, customer confusion issues will arise and be directed to Citizens regarding the local calling areas for Clear Talk's service.

The Commission has made it clear in numerous EAS cases that it is very concerned about maintaining a community of interests and avoiding customer confusion with respect to the provision of telephone services. These EAS areas have been ignored by Clear Talk. The Commission indicated that splitting communities into two or more areas could disrupt existing communities of interest and could cause unnecessary customer confusion.

The same reasoning used by the Commission in the context of the extended area service should apply here. Customers residing in an exchange or an EAS area have a common community of interest that will be disrupted and split by Clear Talk's proposal to only serve part

of these exchanges or EAS areas. Customers in small rural communities are likely to be confused if some residents can obtain service from Clear Talk that is advertised in the local area and eligible for federal support while other residents in the same community cannot obtain the service.

Clear Talk has not provided any good reason, or shown why it is in the public interest, for the Commission to allow redefinition of the service areas of rural carriers below the wire center level. As a result of the mismatch of costs and federal support, the increased administrative burdens and customer confusion that will undoubtedly result from disaggregating wire centers, Citizens is opposed to sub-exchange disaggregation. The Commission should not allow Clear Talk to be designated as an ETC in an exchange unless it demonstrates it will serve the entire exchange. If Clear Talk cannot serve the entire exchange due to regulatory or technical limitations, its request to be designated as an ETC should be denied.

II. CONCLUSION

While the benefits are uncertain, the costs of designating Clear Talk as an ETC are immediately real. The cost to the federal universal service fund is significant and is the fastest growing portion of the federal USF. Clear Talk has not reasonably established that it has the ability to provide service to all requesting customers in its proposed ETC area. Clear Talk's proposal to split and only serve a portion of the rural carriers' exchange disrupts existing communities of interest and also creates other administrative and customer confusion costs.

III. NEXTEL

A. Nextel Has Failed To Establish that Granting It ETC Status Is In the Public Interest.

As part of the “public interest” determination, the Commission should also weigh the cost of designating Nextel as an ETC against the benefits expected from such a designation. Nextel intends to continue to provide wireless service to its existing customer base and any new customers that subscribe to service in much the same way it would provide service today. Nextel has not presented specific evidence or commitments that it will deploy innovative services or new technologies beyond the services it already offers in its proposed ETC area. In other words, the federal universal support funding is not needed to support basic universal service offerings (Tr. 96, LL. 9-22), but instead will be subsidizing Nextel’s current service offerings.

As a result of Nextel’s decision to continue to offer its existing service packages to its existing customer base and new customers at existing prices, it is unlikely that its designation as an ETC will promote competition and benefit consumers by increasing customer choice, innovative services, or new technologies. There is no evidence that there is a lack of competition in the areas Nextel proposes to receive ETC designation. Tr. 102, LL. 4-8.

Individuals and businesses already have the opportunity to purchase cellular service from Nextel. Accordingly, Nextel is already competing with incumbent local exchange carriers for customers, with their current service wireless offerings and without federal universal support. Customers in the areas where Nextel is seeking ETC designation currently have the choice to receive wireless service from Nextel and will continue to do so regardless of whether Nextel receives an ETC designation.

The Commission has a responsibility to consider public interest issues associated with designating Nextel as an ETC and is not required to approve Nextel's application simply because minimal criteria have been met. Before granting Nextel's request for ETC designation, the Commission must find that such designation is in the public interest. It appears the costs of federal USF support (which Idaho subscribers must fund) clearly outweigh the illusory benefits of designating Nextel as an ETC. As previously noted, wireless ETC's share of the federal fund is growing at very fast rate. Absent significant modifications or limitations to Nextel's proposal to be designated as an ETC, Nextel's request that it be designated as an ETC in the proposed service territory is not in the public interest.

B. Nextel Has Failed To Demonstrate that It Is Capable and Committed to Offering the Supported Services Throughout the Entire Area in Which It Seeks ETC Designation.

As previously indicated, the FCC has recently made it clear, that although a telecommunications carrier's inability to provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC, the carrier must make a "reasonable demonstration . . . of its capability and commitment to provide universal service. . . ."¹³ While Nextel has indicated that it will provide service to customers in the areas where it is designated as an ETC, it has offered no reliable assurances of how it will accomplish this or what the timetable would be for enhancing its existing network to provide the required service throughout its ETC territory.

¹³ See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Comm'n, Declaratory Ruling*, CC Docket No. 96-45, FCC Rcd 15168 at 15178, para. 24 (2000) (*Declaratory Ruling*), *pet'n for recons. pending*.

It is also clear that Nextel will not be providing coverage in all areas where wireless service coverage is currently not available. After noting that 95% of American consumers already have three or more choices in wireless providers (Tr. 89, LL. 1-11), Nextel admitted that it was choosing not to serve the Citizens exchanges where there were no competitors. Tr. 127, LL. 12-16. Furthermore, none of the proposed cell sites is intended to provide service in the following Citizens' exchanges: Elk City, White Bird, Riggins, Cascade, Horseshoe Bend, and Fairfield. Exhibit 106. Additional spectrum could have been purchased initially or from other carriers or Nextel could have entered joint ventures with other carriers (including its affiliated company) so as to service other portions of the Citizens Study Area; however, it chose not to do so. Tr. 119, LL. 3-8. If the Idaho Commission is going to grant ETC status, Nextel agrees that one of the factors to be considered should be whether a carrier will bring service to areas that have no competition. Tr. 128, LL. 1-11.

In its pre-filed testimony and during the hearing, Nextel did not make any commitment as to how long, in terms of time, it would take to provide coverage in the entire area for which Nextel seeks ETC status except that it would be a matter of years. Tr. 73, LL. 8-11; Tr. 140, LL. 8-16. Without an estimate of time to construct or an analysis of the number of tower cell sites needed, or anticipated costs to provide service in its proposed ETC territory, Nextel's capability and commitment to offer the supported services throughout the entire ETC area is highly questionable. Tr. 137, LL. 4-15. By contrast, it agreed in Mississippi to serve everyone in its ETC area without an affordable or reasonable test. Tr. 152, LL. 3-13.

Based on Nextel's testimony, it is clear that customers requesting service from Nextel may be subjected to varying delays, of years if a new cell site must be constructed, before

service could be made available to the requesting customer. Nextel has not, and apparently cannot, make a commitment regarding any more specific timetable for providing service to customers requesting service.

Assuming for the sake of argument only that Nextel should be designated as an ETC, the Commission should impose measurable service quality standards associated with the provisioning of service in a specified timeframe as a condition of ETC status. As previously indicated, the FCC has expressed concern that wireless complaints have increased 24% in its latest quarterly report. Tr. 132, LL. 3-24. This is especially important since Nextel's service contract allows it to change the Nextel service area in its sole discretion. Exhibit 102, p. 7.

C. Nextel Should Not Be Designated As An ETC in a Portion of the Study Area It Will Not Fully Serve.

Nextel seeks to redefine the service territories (for universal service purposes) of the rural local exchange carriers that its proposed ETC service territory overlays. Nextel asks that this redefinition be done at the wire center level.

1. Citizens' Study Area.

Citizens has one study area in Idaho. Nextel does not seek ETC designation for Citizens' exchanges outside its licensed area and, in fact, it does not even seek to serve three Citizen's exchanges where it does have FCC licenses. Tr. 137, LL. 10-17. Nextel proposes that the service areas of Citizens be redefined, for ETC service area purposes, to 12 of the 18 exchanges. In its application, Nextel states that redefinition of Citizens' service area is necessary because Citizens' Idaho study area includes groups of non-contiguous exchanges. Application paragraph 24. Nextel, however, fails to explain why it will not serve exchanges contiguous to exchanges it will serve and for which it has FCC licenses (Cascade and Horseshoe Bend). In

other words, some of the Citizen customers will be eligible to receive Nextel's service with federal USF support and other Citizen's customers in adjoining wire centers will not.

2. Nextel has not provided justification to Redefine Citizens' service area.

Citizens is a rural incumbent local exchange carrier. The Federal Telecommunications Act requires the Commission and the FCC to act in concert if the Study Areas for areas served by rural carriers is to be altered.

In addition, the language "taking into account" indicates that the Commission and the FCC must each give full consideration to the Joint Board's recommendation and must each explain why they are not adopting the recommendations included in the Recommended Decision of the Joint Board convened to provide recommendations with respect to federal universal service support mechanisms.¹⁴

The redefinition requested by Nextel in the rural telephone company exchanges that it will serve raises several important issues, involving federal support amounts, increased administrative burdens, and consumer confusion issues. Nextel has failed to establish that the benefits of redefining Citizens' Service Area is justified or in the public interest.

¹⁴ See 47 C.F.R. § 54.207(d)(1). When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, the Joint Board made the following observations: (1) the potential for "cream skimming" is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area; (2) the Telecommunications Act of 1996 (1996 Act), in many respects, places rural telephone companies on a different competitive footing from other local exchange companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*Recommended Decision*).

3. Mismatch of costs and federal support amounts.

As previously noted, the Federal-State Joint Board on Universal Service, believes that secondary ETC designations below a rural LEC's study area raises concerns over possible cream-skimming activities or the mismatch of costs associated with the area upon which the federal funding amounts are based and the area the carrier actually serves.

As noted above, Nextel is proposing to serve only a portion of Citizens' exchanges. Citizens has disaggregated its federal support to the wire center level, for federal universal service support purposes and the Commission accepted these disaggregation plans. The amount of support available now for each Citizens exchange is based upon the estimated cost for serving three different zones. Exhibit #110.

As a result of this averaging for costs in a zone, the costs of serving some customers in the zone is lower than the average cost of serving all customers in the zone. Conversely, the cost of serving some customers in one exchange is higher than the average cost of serving all customers in the zone. Allowing competitive carriers to receive ETC designation for only a portion of the exchanges creates a situation in which a carrier may only serve the least expensive section of a zone, but receives federal support based on zone-wide costs. This situation becomes worse, where, as here, the carrier does not have any firm plans to serve even the entire exchange unless its profit justifies the expenditure. Tr. 137, LL. 4-15; Tr. 496, LL. 13-20.

The Federal-State Joint Board recognized that if competitors are allowed to serve only a portion of a rural telephone company's study area, the competitor may only serve the least expensive customers and, thereby, "undercut the ILEC's ability to provide service throughout the

area.”¹⁵ Because Nextel is proposing to serve only parts of certain rural wire centers, it may be serving only the lower costs portions of the exchanges in which it seeks ETC designation. As admitted by Nextel, it is choosing not to serve many of the high cost exchanges where there are no wireless carriers while serving all of the lowest cost exchanges where there is already competition. Tr. 125, LL. 15-25.

4. Increased administrative burden.

In addition to the mismatch of costs and federal support, redefinition and the resulting need to modify previously filed disaggregation plans will create additional and potentially significant administrative burdens for rural LECs like Citizens. As noted above, Nextel is proposing to serve only a portion of Citizens’ exchanges. Maintaining records on certified ETCs will be more difficult when the ETC service areas for competing carriers are not designated along consistent boundaries. At some point, other providers may seek to be designated as an ETC in different portions of the Citizens exchanges to match its unique territory. Ultimately, this can result in disaggregation, which is unworkable from a cost calculation and universal service funding perspective.

The Federal-State Joint Board has recognized that rural ILECs will be subjected to the increased administrative burdens associated with calculating costs and universal service support below the study area level.¹⁶

¹⁵ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd para. 189 (1997) (*Universal Service Order*).

¹⁶ *Recommended Decision* at para. 174.

In order to accommodate Nextel's request for redefinition, Citizens may be required to undertake a cost study analysis of the costs to provide service within its various exchanges and zones. Nextel has provided no justifications for the Commission to impose increased administrative burdens on Citizens associated with undertaking additional cost study analysis and the further disaggregation of universal services support below the exchange level at this time if Nextel, as appears from the evidence, is going to focus its service in the more heavily populated areas.

Nextel has not provided any good reason, or shown why it is in the public interest, for the Commission to allow redefinition of the Citizen service area. As a result of the mismatch of costs and federal support, the increased administrative burdens and customer confusion that will undoubtedly result, Citizens is opposed to service area redefinition. The Commission should not allow Nextel to be designated as an ETC unless it demonstrates it will serve the entire study area. If Nextel cannot serve the entire study area due to regulatory or technical limitations, its request to be designated as an ETC should be denied.

IV. CONCLUSION

While the benefits are uncertain, the costs of designating Nextel as an ETC are immediately real. The cost to the federal universal service fund is significant and is the fastest growing portion of the federal USF. Nextel has not reasonably established that it has the ability to provide service to all requesting customers in its proposed ETC area. Nextel's proposal to split and only serve a portion of Citizens' rural carrier Study Area disrupts existing communities of interest and also creates other administrative and customer confusion costs. The Commission should not authorize Nextel as an ETC in the wire exchange centers Nextel intends to serve.