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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of IAT)	Case No. GNR-T-03-8
Communications, Inc. d/b/a NTCH-Idaho, Inc., or)	
Clear Talk, for Designation as an Eligible)	
Telecommunications Carrier)	
_____)	_____
)	
In the Matter of the Application of NPCR, INC.)	Case No. GNR-T-03-16
d/b/a NEXTEL PARTNERS Seeking)	
Designation as an Eligible Telecommunications)	
Carrier that may receive Federal Universal Service)	
Support)	

**NEXTEL PARTNERS' POST-HEARING BRIEF IN SUPPORT OF
APPLICATION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners" or the "Company"), submits this post-hearing brief in support of its Application for designation as a federal eligible telecommunications carrier ("ETC").

I. INTRODUCTION

The fundamental question presented by this proceeding is whether the Idaho Public Utilities Commission ("Commission") will effectuate the requirements of the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* (the "Act") and establish competitive local telecommunications markets in which new entrants, including a commercial mobile radio services ("CMRS") provider, can be eligible to receive universal service funds to meet the telecommunications needs of Idaho consumers. Consistent with federal and state law, the Commission should designate Nextel Partners as an ETC in the state of Idaho, and reject attempts to protect the interests of monopoly local exchange carriers ("LECs") to the ultimate detriment of Idaho consumers. Designating Nextel Partners as an ETC is consistent with the statutory mandates of Section 214(e) of the Act, the directives of the Federal Communications Commission ("FCC"), and the interests of the public.

The record evidence establishes that Nextel Partners satisfies all Section 214(e)(1) requirements for designation, and that designation of Nextel Partners as an additional ETC is in the public interest as required by 47 U.S.C. § 214(e)(2). For the one rural telephone company study area that the Company cannot wholly serve, *i.e.*, Citizens Telecommunications Company of Idaho ("Citizens"), the record evidence supports designation on an exchange basis, rather than through the study area. Accordingly, the Commission should unconditionally designate Nextel Partners as an ETC in the rural telephone company study areas it can wholly serve, and conditionally designate Nextel Partners as an ETC in the requested Citizens exchanges.

II. NEXTEL PARTNERS' APPLICATION

This matter commenced on April 28, 2003, when Nextel Partners filed an Application to be designated as a federal ETC in certain areas of the state of Idaho. The Application describes and demonstrates Nextel Partners' satisfaction of the ETC criteria and documents the Company's

requested ETC service areas based on its licensed service areas and current coverage maps. Nextel Partners sought designation in four rural telephone company study areas, and designation in certain Citizens exchanges. Tr. 34.¹ The Company sought designation only for the receipt of federal universal service funds, and did not request ETC status for purposes of receiving support from the Idaho Universal Service Fund under Idaho Code § 62-610, *et seq.* The Commission consolidated Nextel Partners' Application with the application of IAT Communications, Inc. ("Clear Talk"). Citizens and the Idaho Telephone Association ("ITA") (collectively, "Intervenors") intervened and opposed the applications.

Nextel Partners offers commercial mobile radio services ("CMRS") pursuant to licenses issued by the FCC. These licenses cover a vast portion of central and southern Idaho, and other small and rural markets throughout the nation. Tr. 10. Its corporate parent is Nextel Partners, Inc., a publicly held corporation that in just a few years has built out its network extensively through its subsidiaries, and now serves more than 1,000,000 subscribers nationwide under the "NEXTEL" brand name. Tr. 10. Nextel Partners should not be confused with Nextel Communications, Inc. ("Nextel Communications"), a distinctly different corporation that provides NEXTEL brand services in urban areas. The corporations are separately traded, and each has its own board of directors and executive officers. *Id.* Collectively, Nextel Partners and Nextel Communications provide NEXTEL brand service in areas of the United States populated by approximately 240 million people. *Id.*

As a provider in small and rural markets, Nextel Partners has made a commitment to be a universal service provider throughout its service areas. It has filed applications to be designated

¹ Citations to the hearing transcript will be referred to as "Tr."

as an ETC in more than 15 states, and has already been designated an ETC in the states of Wisconsin, Mississippi, Iowa and Arkansas.²

III. BACKGROUND OF INTERVENING ILECS

ITA is a group of rural telephone companies serving 40,000 total access lines in rural Idaho. Tr. 485. Each ITA company has been designated as an ETC, and is in fact the only ETC in its service area. Tr. 544. These companies support the competitive principles in the Act,³ but opposed the Nextel Partners and Clear Talk applications.

Citizens serves approximately 21,000 access lines in Idaho. Tr. 485. Like the ITA companies, Citizens is the only ETC in its Idaho service areas. Tr. 605. At the national level, Citizens is among the ten largest LECs in the country and serves over 2,000,000 access lines. Tr. 605. Citizens receives more than \$7 million each year in federal universal support for its Idaho lines, and receives over \$130,000,000 nationwide. Citizens also supports competition and the goals of the Act generally,⁴ but nonetheless claimed it is too small to compete in the universal service market. Tr. 605. Citizens took this position even though current ILEC funding levels will not be affected by competitive ETCs at least until 2006. Tr. 220, 606.

² *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8081-TI-101, Final Decision (Sept. 30, 2003) ("*Nextel Partners Wisconsin Order*") (Ex. 108); *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Miss. Pub. Svc. Comm'n Docket No. 03-UA-0256, Order (Sept. 29, 2003) (Ex. 109); *In re: NPCR, Inc. d/b/a Nextel Partners*, Iowa Utils. Bd., Docket No. 199 IAC 39.2(4), Order Designating Eligible Carrier (May 15, 2003); *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as Amended*, Arkansas PSC Docket No. 03-141-CL, Order No. 4 (Dec. 22, 2003) (attached hereto as Exhibit 111).

³ Mr. Trampush agreed that "Congress made a decision to bring competition to all areas because competitive markets generally benefit consumers." Tr. 547.

⁴ Mr. Tade testified that "[t]he most effective way to promote economic efficiency in competitive markets is to allow competitive market forces to entice and discipline the behavior of firms. Effective competition requires that all firms must compete on the merits of their respective efficiencies." Tr. 586-87.

IV. BACKGROUND OF FEDERAL UNIVERSAL SERVICE MECHANISMS

In the Act, Congress directed the FCC and states to act jointly to establish support mechanisms to ensure the delivery of basic telecommunications services to all Americans. 47 U.S.C. § 254(a)(1). Prior to the Act, the states and the federal government attempted to facilitate telecommunications services in rural areas through implicit subsidies designed to benefit incumbent LECs, such as excessive access charges, provisioning of non-competitive services at above-cost rates and state geographically averaged rates. By establishing universal service support mechanisms under the Act, Congress moved away from implicit subsidies, with explicit federal and state subsidies then available to the ETC.⁵ This would allow competition to drive costs and prices down in all telephone markets.

Through the Act, Congress directed the FCC and states to establish specific, predictable and sufficient support mechanisms for universal service. *See* 47 U.S.C. § 254(d). The FCC has put in place funding mechanisms that provide for sufficient and predictable funding in high cost areas, and continues to seek guidance from the Joint Board on how these funding mechanisms can be improved to achieve the Act's goals. As part of this process, the FCC adopted a five-year plan in 2001 that assures rural telephone companies will not lose federal universal service support – even if they lose customers – through 2006. This transition period allows competitive universal service to develop in rural company areas:

We conclude that the plan we adopt today will preserve and advance universal service, consistent with the goals and principles set forth in section 254 of the Act, and encourage competition in high-cost areas, consistent with the competitive goals of the 1996 Act. In particular, we find that adoption of the modified embedded cost mechanism is consistent with our obligation to ensure that the support provided to rural carriers over the next five years is specific, predictable,

⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶¶ 17-19 (rel. May 8, 1997) ("*Universal Service Order*"); *In the Matter of Federal-State Joint Commission on Universal Service*, CC Docket No. 96-45, Seventh Report and Order, FCC 99-119, ¶ 30 (rel. May 28, 1999) ("*Seventh Report and Order*").

and sufficient. In addition, we find that the mechanism is consistent with the goals of section 254 to ensure that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are affordable and reasonably comparable to rates charged for similar services in urban areas. We find further that the flexible plan for disaggregating and targeting support adopted in this Order will facilitate competitive entry into high-cost areas, bringing the benefits of competition to consumers in rural areas.⁶

Now that these mechanisms are in place, it is up to this Commission to ensure that they will be utilized to provide benefits to consumers in high cost, rural areas of Idaho.

Granting ETC designation does not in and of itself mean Nextel Partners will receive federal subsidies. Instead, once designated, "a carrier's continuing status as an [ETC] is contingent upon continued compliance with the requirements of Section 214(e) and only an eligible carrier that succeeds in attracting and/or maintaining a customer base to whom it provides universal service will receive universal service support."⁷ In addition, Nextel Partners' ability to receive support from the federal fund will not completely level the playing field with incumbent LECs because the LECs will continue to receive subsidies not available to Nextel Partners. It will, however, prompt competition in the universal service market and is the first step in allowing Idaho consumers the benefits envisioned by the Act.

Both the Act and the *Universal Service Order* establish the requirements for a carrier to be designated an ETC. Section 214(e)(1) requires a carrier to be a common carrier; provide a base set of supported services established by the FCC in 47 C.F.R. § 54.101(a); advertise the availability of the services and charges; provide the supported services throughout a designated service area; and in areas served by rural telephone companies, demonstrate that designation of an additional ETC is in the public interest. 47 U.S.C. § 214(e)(1)-(2).

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Fourteenth Report and Order, FCC 01-157, ¶ 10 (rel. May 23, 2001) ("*Fourteenth Report and Order*") (emphasis added). Mr. Wood discussed these mechanisms at length in his testimony.

⁷ *Universal Service Order*, ¶ 138.

V. NEXTEL PARTNERS SATISFIES THE ELIGIBILITY CRITERIA OF 47 U.S.C. § 214(e)(1)

The record evidence establishes that Nextel Partners meets all criteria for ETC designation contained in Section 214(e)(1). Those criteria are discussed below with reference to the record evidence.

A. Nextel Partners is a Common Carrier

The first requirement for ETC designation is status as a common carrier under federal law. Nextel Partners is a "telecommunications carrier" as defined in 47 U.S.C. § 153(49), and is authorized by the FCC to provide CMRS in those portions of Idaho identified on Exhibit 106. Its current network coverage is shown on Exhibits 103 and 104. A "common carrier" is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. The FCC's regulations specifically provide that a specialized mobile radio service, like that provided by Nextel Partners, is a common carrier service. *See* 47 C.F.R. § 20.9(a)(4). Nextel Partners is therefore a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1). The testimony in this regard is undisputed. Tr. 9, 545.

B. Nextel Partners Provides Each of the FCC's Supported Services

The record confirms that Nextel Partners can provide each of the supported services required of an ETC under 47 C.F.R. § 54.101(a), and will offer those services to its universal service customers once designated an ETC. Tr. 20-27. Nextel Partners introduced clear evidence that it has existing wireless facilities and sufficient capacity to provide the supported services in the areas for which it seeks designation. Tr. 20-21. Each of these federal universal services is discussed more fully below.

1. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make

and receive phone calls within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone companies, all Idaho customers of Nextel Partners are able to make and receive calls on the public switched network within the FCC's specified bandwidth. Tr. 22.

2. Local usage. An ETC must include an amount of free local usage determined by the FCC as part of a universal service offering. 47 C.F.R. § 54.101(a)(2). The FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has declined to require that ETCs offer unlimited local usage.⁸ Nextel Partners can and will include local usage in its universal service offerings. Tr. 22.
3. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Carriers that provide signaling that is functionally equivalent to DTMF meet this requirement. 47 C.F.R. § 54.101(a)(3). Nextel Partners uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. Tr. 23.
4. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4); *Universal Service Order*, ¶ 62. Nextel Partners meets this requirement by providing a dedicated message path for the length of all customer calls. Tr. 24.
5. Access to emergency services. The ability to reach a public safety answering point ("PSAP") by dialing 911 is a required service. Enhanced 911, or "E911," is only required if a PSAP is capable of receiving and utilizing such information, and requests the delivery of such information from a wireless provider. *Universal Service Order*, ¶¶ 72-73. Nextel Partners currently provides its customers with access to emergency services by dialing 911 in satisfaction of this requirement. Tr. 24. Nextel Partners has deployed Phase I and Phase II E911 as requested in Ada County. Nextel Partners will continue to implement Phase I and Phase II E911 requests in accordance with FCC rules. *Id.*
6. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to

⁸ *In The Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*").

arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6); *Universal Service Order*, ¶ 75. Nextel Partners demonstrated it meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities (e.g. LECs, IXC, etc.). Tr. 25-26.

7. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47 C.F.R. § 54.101(a)(7). Nextel Partners meets this requirement by providing its customers the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers. Tr. 26.
8. Access to directory assistance. The ability to place a call directly to directory assistance is a required service offering. 47 C.F.R. § 54.101(a)(8). Nextel Partners meets this requirement by providing all of its customers with access to directory assistance by dialing "411." Tr. 26.
9. Toll limitation for qualifying low income consumers. An ETC must offer either "toll control" or "toll blocking" services to qualifying Lifeline customers at no charge. Nextel Partners is unable to provide toll control at this time. However, The record evidence establishes that the Company is fully capable of providing toll blocking and that it can and will provide the service to its Lifeline and Link Up customers, at no charge, as part of its universal service offerings. Tr. 26-27.

Intervenor witness Mr. Trampush agreed that Nextel Partners can provide these nine supported services:

Q: Do you take issue with Nextel Partners' statements that it is able to provide the nine supported services?

A: In the areas they've requested, I believe they can.

Tr. 546.

In addition, the Commission has already found that Clear Talk – a CMRS provider like Nextel Partners – provides these supported services.⁹ The Commission should enter an order

⁹ *In the Matter of the Petition of IAT Communications, Inc. d/b/a NTCH-Idaho, Inc. or ClearTalk for Designation as an Eligible Telecommunications Carrier*, Idaho PUC Docket No. GNR-T-03-8, Order No. 29261 (June 11, 2003).

that Nextel Partners demonstrated an intent and ability to provide the supported services upon designation.¹⁰

C. Nextel Partners Will Satisfy Advertising Requirements

The third requirement for ETC designation is that a carrier agree to advertise the availability and charges for the supported services using media of general distribution. 47 U.S.C. § 214(e)(1). To date, neither the FCC nor the Commission has adopted any specific advertising guidelines for any ETC.¹¹ Nextel Partners has committed to advertising in media of general distribution, including in newspapers and magazines and on radio and television, in accordance with the federal law, and provided the outline for an advertising plan. Tr. 32-33 & Exhibit 105. Intervenors offered no evidence suggesting any deficiency in Nextel Partners' plan or commitment to advertise its universal service offerings. Thus, the Commission should properly conclude that Nextel Partners satisfies the advertising requirement under Section 214(e)(1).

D. Nextel Partners Will Participate in Lifeline and Link Up

Federal law requires all ETCs to participate in federal Lifeline and Link Up programs, which support the provision of universal service to low-income customers. The rules governing Lifeline and Link Up are set forth within 47 C.F.R. §§ 51.400 - 54.415. In its Application, Nextel Partners acknowledged and undertook these obligations. Application, ¶ 10(i). Mr. Peabody further discussed these programs in his testimony. Tr. 26-27. The Commission should find Nextel Partners will participate in the Lifeline and Link Up programs in compliance with FCC rules as is required of all ETCs.

¹⁰ Citizens had earlier suggested that Nextel Partners would be required to provide unlimited local usage. Tr. 592. While Nextel Partners does have one plan that includes unlimited usage (Tr. 64), the FCC has recently confirmed that "unlimited local usage should not be added to the list of supported services." *July 2003 Order*, ¶ 14.

¹¹ *Universal Service Order*, ¶ 148.

E. Nextel Partners Provides the Required Services Using its Own Facilities

An ETC must offer the required services using its own facilities or a combination of its own facilities and another carrier's services. Nextel Partners currently provides the required services using its existing, facilities-based digital network infrastructure and licensed CMRS spectrum in Idaho. Tr. 20-21. Intervenors offered no evidence to challenge Nextel Partners' demonstrated satisfaction of this request. Accordingly, the Commission should find that Nextel Partners meets the requirement to provide service through its own facilities.

VI. NEXTEL PARTNERS HAS IDENTIFIED APPROPRIATE DESIGNATED SERVICE AREAS

A. The Standard for an ETC Service Area is Set forth in Federal Law

The final requirement for ETC designation (except for the public interest factor in rural LEC areas discussed below), is that a carrier establish appropriate service areas through which it will offer and advertise the supported services. 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural telephone company, 47 U.S.C. § 214(e)(5) provides that the term "service area" means the rural telephone company's "study area," unless and until the FCC and a state commission establish different service areas under the procedures set forth in 47 C.F.R. § 54.207(c)-(d).¹²

Exhibit 106 identifies the rural LEC study areas and Citizens exchanges for which Nextel Partners seeks designation as an ETC. Nextel Partners operates pursuant to licenses that cover the entire study areas of Albion, Filer Mutual, Fremont and Project Mutual. Thus, Nextel Partners seeks unconditional designation for these rural telephone companies. For the areas

¹² A "study area" is generally considered to be all of the rural telephone company's existing certificated exchange service areas in a given state. *Universal Service Order*, ¶ 172 n. 434.

served by Citizens, Nextel Partners seeks ETC designation conditioned on the Commission and FCC redefining the service area requirement for Citizens' service area on an exchange basis pursuant to 47 C.F.R. § 54.207(b). As explained below, Nextel Partners' redefinition request is fully consistent with federal law.

B. A New ETC Must Be Given a Reasonable Opportunity to Extend its Network in its Designated Areas

The FCC has made clear that a new entrant can be designated as an ETC before building out its network, and does not need to provide detailed business and buildout plans as part of an application.¹³ Instead, a new entrant like Nextel Partners should be designated as an ETC, and must be given a reasonable opportunity, subject to real world business limitations, to serve an area. The *Declaratory Ruling* contains the following discussion:

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

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

¹³ *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket 96-45, Declaratory Ruling, FCC 00-248 (rel. Aug. 10, 2000) ("*Declaratory Ruling*").

support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.¹⁴

The Intervenors have argued in this case that Nextel Partners' Application should be denied because it does not have business plans that would show ubiquitous buildout within a short period of time. Tr. 521. This is, however, exactly the kind of showing the FCC rejected in the *Declaratory Order*. As Mr. Peabody explained, the company has been providing service for only a few years, and cannot make business commitments about specific additional buildout until it is designated as an ETC, evaluates funding levels, considers its capital budgets, and analyzes other market dynamics. Tr. 73.

Intervenor witnesses Mr. Trampush recognized on cross-examination that a company like Nextel Partners is obligated to make good financial decisions, and that capital markets simply do not allow companies to commit to huge investments without consideration of the financial impacts:

Q: Who provides the capital resources for a publicly-traded company to make capital investment?

A: Either equity shareholders or bondholders.

Q: And do those individuals require that the company make good economic decisions?

A: They look at business plans prior to making investments, yes, and the historic use of the funds.

Q: And if a company came in and promised to spend \$25 million to provide ubiquitous service throughout an area without considering the economic models, customer demand, revenue streams or the ability to make the investment back, nobody would give the company the money to spend, would they?

A: Well, no one would go to an investor without a business plan supporting that kind of capital.

¹⁴ *Declaratory Ruling*, ¶¶ 12-13 (emphasis added).

Tr. 560.

It is essential for the Commission to recognize that as a competitor, Nextel Partners is not guaranteed a single dollar from the federal universal service funds – it will obtain funds only for customers who choose its service. Because neither the Commission nor the FCC would guarantee cost recovery, a competitor simply cannot be required to commit the huge capital investments proposed by the Intervenors. Tr. 73 (Peabody) ("Intervenors propose that we guarantee that we will complete a significant buildout in a short period of time with no certainty that we will have any chance to make a profit. No unregulated new entrant could ever meet this standard."). Moreover, the notion that the Intervenors today provide "ubiquitous" service – or intend to do so – is simply wrong. As Mr. Wood testified, ILECs generally cover 2% - 3% of their service territory. Tr. 293. No one would suggest these carriers must demonstrate plans to cover the remaining 97% as a condition of ETC designation. The Intervenors' arguments are nothing more than artificial barriers to entry designed to protect their own financial interests, and should be rejected.

C. Nextel Partners has Accepted the Service Obligation Imposed on ETCs

The Commission should find that Nextel Partners has demonstrated an intent and ability to meet the obligations of an ETC. Nextel Partners has clearly undertaken the service obligations of an ETC:

"Upon designation, Nextel Partners will provide the supported services within those Designated Areas consistent with the obligations of an ETC." Application, ¶ 11.

"As is clear from the Idaho coverage map, Nextel Partners is well-equipped to respond to "reasonable requests for service" throughout the rural telephone company study areas for which it seeks designation in Idaho, and Nextel Partners will meet all of its legal obligations." Tr. 30-31.

"Nextel Partners is licensed in all areas where we seek ETC designation, and commits to meet the obligations of an ETC." Tr. 71.

In addition, Nextel Partners is willing to work with Commission Staff on an ongoing basis to show how funds are being used and to show progress in its network buildout. Nextel Partners has made the commitment to meet the service obligations imposed on all ETCs.

Nextel Partners has the ability to meet these obligations. Nextel Partners has already made a tremendous commitment to Idaho, operating pursuant to licenses that cover all requested ETC service areas. Tr. 71. As Mr. Peabody explained, these licenses were expensive and involved complex bidding procedures and extensive negotiations. Tr. 73. The Intervenors agree this demonstrates a commitment to service these areas. Tr. 557 (Trampush); 608-09 (Tade). Second, Nextel Partners has accomplished a significant buildout of these areas in a few short years. Tr. 11; Exs. 103 and 104. Again, the Intervenor witnesses could not dispute the fact that this buildout represents significant action toward serving these areas. Tr. 557, 608-09. By its clear commitment, combined with significant action towards building out licensed areas, Nextel Partners meets the obligation to be designated as an ETC in all areas set forth in its Application.

VII. NEXTEL PARTNERS' ETC DESIGNATION IS IN THE PUBLIC INTEREST

Section 214(e)(2) gives the Commission the responsibility to make a public interest determination for designation of an additional ETC in an area served by a rural telephone company. In accordance with the stated purposes of the Act,¹⁵ the FCC has determined that the public interest is served when rural consumers are provided the benefits of competitive universal services. Thus, in the absence of empirical evidence that rural consumers will be harmed, or evidence that a specific rural telephone company study area cannot support competitive universal

¹⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996) ("To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.") (emphasis added).

service, the FCC has concluded that a CMRS provider should be designated as a competitive ETC in a rural telephone company area:

We conclude that it is in the public interest to designate Western Wireless as an ETC in Wyoming in those designated service areas that are served by rural telephone companies. Western Wireless has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition. We find that there is no empirical evidence on the record to support the contention that the designation of Western Wireless as an ETC in those designated service areas served by rural telephone companies in Wyoming will harm consumers. In fact, we conclude that those consumers will benefit from the provision of competitive service and new technologies in high-cost and rural areas.

We note that an important goal of the Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies. We agree with Western Wireless that competition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Wyoming by creating incentives to ensure that quality services are available at "just, reasonable, and affordable rates."

* * *

We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers. While we recognize that some rural areas may in fact be incapable of sustaining more than one ETC, no evidence to demonstrate this has been provided relating to the requested service areas. We believe such evidence would need to be before us before we could conclude that it is not in the public interest to designate Western Wireless as an ETC for those areas served by rural telephone companies.¹⁶

¹⁶ See *In the Matter of Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum

Consistent with these guiding principles, the Commission should consider the record evidence relating to the public interest in light of the following factors:

- Will the ETC designation facilitate competition in the provision of universal services to the benefit of Idaho's rural consumers?
- Does the record demonstrate any significant adverse impact to any rural consumers resulting from the ETC designation so significant as to justify denying rural consumers the benefits of competition?

The record before the Commission demonstrates the goals of the Act and the interests of the public will be promoted by granting ETC designation to Nextel Partners. Idaho's rural consumers will realize the benefits of competition through increased choices, and granting the designation will also further the deployment of new telecommunications services to Idaho's rural consumers. Further, there is no evidence that consumers may be harmed as a result of Nextel Partners' ETC designation. The Commission should approve Nextel Partners' Application consistent with the public interest.

A. Granting ETC Designation Will Facilitate Competition to the Benefit of Rural Consumers

The Commission should first determine that Nextel Partners' ETC designation will facilitate competition that will benefit rural consumers consistent with the public interest. The 1996 Act requires that universal service goals be accomplished through competition. The Fifth Circuit Court of Appeals confirmed this when it recognized that a "primary purpose" of the Act is "to herald and realize a new era of competition in the market for local telephone service while continuing to pursue the goal of universal service."¹⁷ The *Alenco* decision requires that the Act must be implemented in a way that accommodates the "dual mandates" of promoting both

Opinion and Order, DA 00-2896, ¶ 16-17, 22 (rel. Dec. 26, 2000) ("*Western Wireless Order*") (emphasis added).

¹⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 625 (5th Cir. 2000).

competition and universal service. *Id.* at 615. Moreover, the Act promised competitive telecommunications markets in all areas of the nation, not just in urban areas: "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services" 47 U.S.C. § 254(b)(3).

As Commissioner Smith noted at the hearing (Tr. 625), the Idaho Legislature has also determined that telecommunications markets should evolve to competitive markets, which will bring benefits to consumers:

The legislature further finds that the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry. The legislature encourages the development of open competition in the telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996.

Idaho Code § 62-602(4). Thus both federal and state law bring a significant policy preference for competitive markets, and this policy preference must be a driving force behind the public interest analysis.

1. Nextel Partners' Designation will Advance General Benefits of Competition

By designating Nextel Partners as an ETC the Commission will advance the development of competitive markets in Idaho. The Intervenors are the only universal service providers in their service areas (Tr. 544), and competitive landline markets have simply not developed in areas served by rural telephone companies. Wireless carriers offer the only real alternative for competitive universal service, and Nextel Partners stands ready, willing and able to take on the obligations of an ETC.

By designating Nextel Partners as a federal ETC, the Commission will allow consumers to choose their service provider by determining which carrier provides the most advantageous

