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Idaho Public Utilities Commission  
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*Attorneys for NPCR, Inc. d/b/a Nextel Partners*

## 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-03-8  
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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  
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### NPCR, INC. d/b/a NEXTEL PARTNERS PETITION FOR RECONSIDERATION

COMES NOW NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners" or the "Company")  
in accordance with RP 331 *et seq.*, hereby requests that the Commission reconsider Order No.  
29541 (the "Order") issued in this case on July 23, 2004 denying Nextel Partners' Application for

eligible telecommunications carrier ("ETC") designation in certain areas within the State of Idaho.

In the Order, the Commission acknowledges that Nextel Partners can provide the Federal Communications Commission's ("FCC") supported services and the Commission fails to identify any consumer harm that would be caused by allowing Nextel Partners to compete for universal service customers and obtain access to federal funds that are available to carriers providing service in high-cost areas. Nonetheless, the Commission determined the Application failed to satisfy the "public interest" requirement in 47 U.S.C. § 214(e)(2), and denied the Application. This finding is based on the following three considerations:

1. Nextel Partners did not produce a build-out plan for review by the Commission;
2. The Commission questioned whether Nextel Partners would be using federal funds to serve consumers in truly rural areas; and
3. Nextel Partners' regulatory status as a commercial mobile radio service ("CMRS") provider regulated by the FCC. (Order, pp. 20-24.)

As discussed below, these considerations do not justify the denial of this Application. In addition, if reconsideration is granted, Nextel Partners will identify three new cell sites in these areas that are hoped to be online by the end of 2004. Nextel Partners will further identify six cell sites that today are not cost-justified, and would not be built any time in the next several years in the absence of ETC funding. If Nextel Partners obtains ETC designation, however, it will spend all universal service funds received in 2005 and onward towards constructing these sites. Nextel Partners will also clarify that its commitment to comply with the CTIA Consumer Code for Wireless Services is a commitment that the Commission will have the authority to monitor and enforce. If Nextel Partners fails to live up to this commitment the Commission would have the authority to take action to revoke Nextel Partners' ETC designation.

## **I. NEXTEL PARTNERS' BUILD-OUT PLANS AND USE OF FEDERAL FUNDS**

As Nextel Partners indicated at the hearing, the Company is licensed throughout the rural service areas identified in its Petition, and the Company is committed to providing service to consumers in this area as expeditiously as possible. Tr. pp. 72-74. No party disputed, however, the significant economic challenges associated with building out a network in these areas. It is also undisputed that even as an ETC, Nextel Partners (unlike the ILECs, who have a high degree of assurance of cost recovery) will not be guaranteed to recover its costs of building these areas. Nextel Partners will have to raise the capital resources to build new sites, and pay for those sites through consumer revenues, as supplemented by per-line support available from the federal universal service fund. Even ITA/Citizens Witness Trampush acknowledged that a publicly-traded company like Nextel Partners could not make a commitment to build in areas that lacked business justification. Tr. 560-562.<sup>1</sup> The Commission's Order fails to acknowledge these economic realities, and would seem to require Nextel Partners to make decisions without regard to the financial impacts on the company or investor capital.

Part of this concern by the Commission regarding network build-out is an apparent belief that Nextel Partners' receipt of universal service funds will not lead to the provision of telecommunications services to consumers in new areas in the State of Idaho. (Order, p. 21.) This is essentially an attack on the FCC's funding mechanisms that provide a competitive ETC a per-line support amount based on the incumbent's receipt of funds. The FCC has determined that

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<sup>1</sup> In fact, there are significant disclosure requirements under federal law that are primarily designed to ensure that investors in a publicly-traded company can be confident that management is making good economic decisions with those investor dollars.

this mechanism is fair and is competitively neutral as applied to competitive ETCs, and this Commission cannot second-guess those FCC decisions:

We agree with the Joint Board that competitive neutrality is a fundamental principle of universal service reform, and that portability of support is necessary to ensure that universal service support is distributed in a competitively neutral manner.

*In the Matter of Federal-State Joint Board on Universal Service*, Seventh Report & Order, FCC 99-119, ¶ 74 (rel. May 28, 1999). In addition, the FCC is currently considering changes to these funding mechanisms to identify and address problems with this funding mechanism. It is that process, not this ETC designation, that is the appropriate forum for such concerns to be raised.

To address the Commission's concern to the best of its ability, however, Nextel Partners can identify three cell sites that will be constructed in these areas, and which the Company hopes will be activated before the end of the year. Attachment A hereto is a diagram that shows existing cell site locations in black, and the three "in-progress" sites in red. This shows further build-out from what was known in December when the case was presented to the Commission, and extends the signal cloud accordingly.

Nextel Partners has also identified six cell sites within the designated areas that would provide service to areas without access to Nextel Partners' network today. Those sites are in the following locations, and are represented in gray on Attachment A:

<u>Site Name</u>	<u>Lat</u>	<u>Long</u>
Rupert Quality	42.6686	-113.669
Aberdeen	42.9391	-112.831
Terreton	43.85	-112.459
Menan	43.8268	-111.992
Packer John	44.2078	-116.069
South McCal	44.9099	-116.095

The cost to construct those cell sites would be approximately \$1.2 million, and there would be ongoing operational costs necessary to maintain those sites. Nextel Partners will not be able to justify building any of these sites within the next three years based on current economic considerations without ETC funding.

If designated as an ETC, Nextel Partners will dedicate all universal service funds received in the State of Idaho to constructing and operating those cell sites. Based on current levels of support and projections, this will take at least several years to accomplish. The sooner such funds are available, however, the sooner these sites will be built. Nextel Partners will also continue to consider other build-out in these areas, and to comply with the *Virginia Cellular* standard for addressing requests for service. See *Nextel Partners' Feb. 24 Supplemental Filing*, pp. 3-4.

Nextel Partners respectfully request that the Commission find this additional commitment satisfies the Commission's concerns regarding the Company's use of federal universal service funds. These specific and concrete commitments go beyond the "tentative general business plan" envisioned by the Commission. (Order, p. 21.) The Commission should also recognize that this provides a clear opportunity for this Commission to use federal universal service funds to bring better telecommunications services to its constituents.

If Reconsideration is granted, Nextel Partners is prepared to promptly file testimony affirming the above commitments, if desired by the Commission.

**I. THE COMMISSION'S CONCERNS OVER SERVICE QUALITY SHOULD BE RECONSIDERED**

The Commission's Order expresses a concern that Nextel Partners would be operating as an ETC without being subject to the regulatory authority of the Commission. Order, pp. 23-24. The FCC has been clear that principles of competitive neutrality require that a common carrier

regulated by the FCC be treated no less favorably than a common carrier regulated by a state commission: "We re-emphasize that the limitation on a state's ability to regulate rates and entry by wireless service carriers under section 332(c)(3) does not allow the states to deny wireless carriers ETC status." *Seventh Report and Order*, supra, ¶ 72. The Commission should reconsider its decision to deny Nextel Partners federal ETC designation simply because it is a federally regulated carrier.

Moreover, the Commission should look on Nextel Partners' status as a participant in the competitive wireless industry favorably – regulators generally attempt to facilitate competitive markets so monopoly regulation is not necessary. In a competitive market, a carrier that does not meet consumers' needs and provide high-quality customer service will not maintain its customer base. If Nextel Partners does not maintain its customer base or draw new customers, its eligibility to obtain universal service funds will decrease correspondingly. These economic incentives are sufficient to address concerns regarding Nextel Partners' provision of service as an ETC. The record in this case reflects that Nextel Partners is an industry leader in providing high-quality customer service. Nextel Partners respectfully requests that this evidence, rather than the Commission's own jurisdictional limitations, should be the proper focus on of the public interest test.

In addition, Nextel Partners has committed to comply with the CTIA Consumer Code of Conduct. This has been accepted and endorsed by the FCC as an appropriate commitment to service quality by a participant in the competitive wireless market. *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, ¶ 30 (rel. Jan. 22, 2004). The Commission

should defer to the FCC's determination on this matter. Moreover, this Commission will have ongoing authority to hold Nextel Partners to its commitment to comply with the CTIA Code. If, for example, Nextel Partners is not complying with that Code, the Commission would have authority to investigate and revoke Nextel Partners' ETC designation. This authority is a heavy stick that would be available to the Commission, and is a better way to address this issue than denying designation.

## **II. CONCLUSION**

Nextel Partners made Application in Spring of 2003 for ETC designation. The Company is a rural provider that has invested substantial resources in the State of Idaho and hopes to continue to do so. Its ability to continue to provide these first-class telecommunications services to people in more rural areas will be dependent on the economics of build-out. These economics depend on the availability of federal high-cost funds. Nextel Partners respectfully requests that the Commission grant this request for reconsideration, hold Nextel Partners to these commitments, and designate Nextel Partners as an ETC in its requested service areas. Nextel Partners further requests that the Commission certify Nextel Partners' use of federal funds prior to the FCC and the Universal Service Administrator prior to the October 1, 2004 deadline. This will allow Nextel Partners to begin planning to receive and use federal universal service support in 2005 to provide more and better telecommunications services to Idaho consumers.

WHEREFORE, Nextel Partners respectfully requests that this Petition be granted, and if desired by the Commission, Nextel Partners will promptly submit testimony of a company witness supporting these commitments.

Dated: August 13, 2004

**NPCR, INC. d/b/a NEXTEL PARTNERS**

By  \_\_\_\_\_

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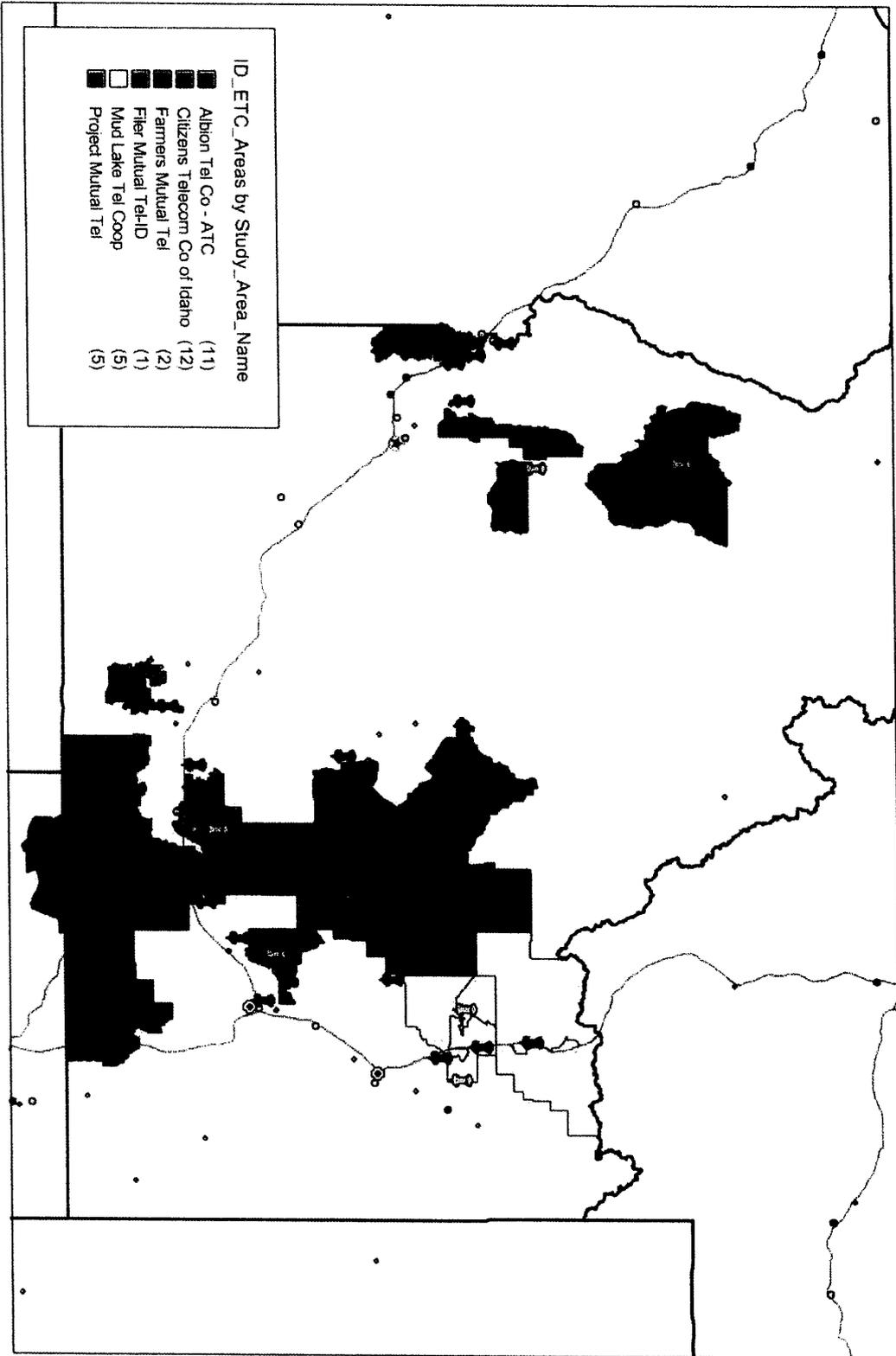
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Black.....Existing Sites  
 Red.....Pending Sites  
 Gray.....USF Sites



**CERTIFICATE OF SERVICE**

I hereby certify that on I caused to be served true and correct copies of the foregoing document, *Nextel Partners' Petition for Reconsideration*, by the method(s) indicated, upon:

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CERTIFICATE OF SERVICE