

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: JOHN HAMMOND

DATE: MAY 7, 2003

SUBJECT: IN THE MATTER OF IAT COMMUNICATIONS, INC. DBA NTCH-IDAHO, INC. OR CLEAR TALK FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER, CASE NO. GNR-T-03-8 AND IN THE MATTER OF THE APPLICATION OF NPCR, INC. DBA NEXTEL PARTNERS SEEKING DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER, CASE NO. GNR-T-03-16.

On February 3 and April 28, 2003, the Commission received a Petition and an Application from IAT Communications and Nextel Partners respectively each requesting that the Commission designate them as a eligible telecommunications carrier ("ETC") for service areas in Idaho that are currently being served by other ETCs. *See Idaho Code* § 61-610A and Order No. 27715, Case No. GNR-T-98-7. *See also* 47 U.S.C. § 214(e)(2). On May 5, 2003, Clear Talk filed an Amendment to its Petition. The Idaho Telephone Association has filed a timely Petition to Intervene for both IAT Communications filing and Nextel Partners' filing.

Because the above filings raise substantially similar issues and will largely involve the same interested persons and parties Staff submits this Decision Memorandum requesting that the Commission process these cases in the same proceeding.

BACKGROUND

1. Clear Talk

IAT Communications, Inc. (a Delaware Corporation), doing business through its wholly-owned subsidiary NTCH-Idaho, Inc., (an Idaho corporation), hereinafter referred to as "Clear Talk," provides wireless telecommunications service in southeast Idaho in accordance with the licenses it has been granted by the Federal Communications Commission ("FCC"). Clear Talk's Petition states that in these areas it currently offers each of the services required by

Order No. 27715 in order to be granted ETC status by the Commission. In addition, Clear Talk states that it will advertise and promote the availability and price of its universal service offering using media of general distribution, pursuant to *Idaho Code* § 62-610D(3)(b). The Company thus requests designation of ETC status in the service areas in southeastern Idaho currently served by one or more of the following ETCs: Albion Telephone Company, Citizens Telecommunications Company of Idaho, Filer Mutual Telephone Company, Fremont Telecom, Inc., Project Mutual Telephone Cooperative Association, Inc. and Qwest Corporation. Clear Talk alleges that designating it as an ETC in these service areas will serve the public interest by promoting competition and benefiting Idaho consumers, especially those in rural and high-cost areas, by: 1) increasing customer choice; 2) increasing innovative services; and 3) increasing the availability of new technologies at competitive prices.

In its Petition Clear Talk stated that it provides service on the Fort Hall Indian Reservation but it was not seeking Commission designation as an ETC in this area because this issue was being pursued by separate petition before the FCC. However, Clear Talk's Amendment stated that it was retracting its statement in its Petition about tribal lands and was now seeking Commission designation as an ETC throughout its service areas in Idaho including tribal lands. The Company's Amendment also states that its Petition for ETC status is not for purposes of receiving support from the Idaho Universal Service Fund pursuant to *Idaho Code* § 62-610. Clear Talk also states in its Amendment that if the Commission chooses to process Nextel Partners' April 28, 2003 Application concurrently then the Company requests that its ETC designation be made effective before Nextel's for a time period that corresponds to the time gap between their respective filings. In the alternative, Clear Talk requests that the Commission issue an interim Order for ETC designation for any service areas for which the Company's Petition is not contested.

On April 21, 2003, the Commission decided to process Clear Talk's Petition by Modified Procedure under the Commission's Rules of Procedure with a 28 day deadline for interested persons and parties to file written comments. However, Notice of Application and Notice of Modified Procedure has not been issued at this time due to the filing of Nextel Partners Application that Staff believes should be processed in a joint proceeding with Clear Talk's Petition.

2. Nextel Partners

NPCR, Inc. dba Nextel Partners, a Delaware corporation with its principle place of business in Eden Prairie, Minnesota, contends that it is licensed to provide, and does provide wireless telecommunication services in certain designated areas of the State of Idaho. Nextel Partners states in its Application that it does not seek designation as an ETC for purposes of receiving support from the Idaho Universal Service Fund pursuant to *Idaho Code* § 62-610, *et seq.*

Nextel Partners states that with exception of the area served by Citizens Telecommunications Company of Idaho each of the designated areas it seeks to serve is a study area of a rural telephone company as defined in 47 U.S.C. § 153(37) of the Act. With regards to the area served by Citizens, the designated areas are identified as specific Citizens exchanges. The rural telephone company study areas for which Nextel Partners seeks ETC designation for in this Application are Albion Telephone Company, Filer Mutual Telephone Company, Farmers Mutual Telephone Company, Mud Lake Telephone Cooperative and Project Mutual Telephone.

Nextel's Application contends that granting its Application is in the public interest for the area served by rural telephone companies because: 1) it is a common carrier providing service with its own facilities; 2) customers will benefit from the provision of competitive universal services; 3) Nextel's offerings have a larger local calling area than landline offerings; 4) Nextel's product supports the provisions of data services; 5) the use of federal universal service funds by Nextel will allow it to extend wireless networks into the rural areas of Idaho; 6) designation will provide incentives for incumbent LECs in the designated areas to improve their networks in order to remain competitive, resulting in improved services to consumers; 7) Nextel Partners will provide all of the supported services required by the Commission, will participate in the LifeLine and Link-Up programs as required by the FCC's Rules, and will otherwise comply with all FCC Rules governing universal service programs; 8) designation will promote the extensive role Nextel Partners plays in the provision of services to Idaho public schools, libraries and local, state and federal government agencies; and 9) designation will not threaten the provision of universal services by rural telephone companies.

Nextel Partners also alleges that because Citizens' service or study area includes groups of non-contiguous exchanges, it does not serve the entire study area of Citizens. Accordingly, the Company requests that the Commission in conjunction with the FCC approve a

redefinition of Citizens' ETC service area to allow a competitive ETC to enter the market. The Company contends that this process is set forth in 47 C.F.R. § 54.207.

In conclusion, Nextel Partners respectfully requests that the Commission enter its Order establishing an intervention deadline, promptly convene a prehearing conference, and thereafter such procedures as the Commission may prescribe enter its Order designating Nextel Partners as an ETC in the designated area identified by this Application effective July 1, 2003.

STAFF RECOMMENDATION

As discussed in Staff's previous Decision Memorandum on Clear Talk's Petition, the designation of multiple ETCs in any area (non-rural or rural), including wireless carriers, and the associated impacts this designation might have on universal service support has received significant national attention and remains under consideration at the FCC.¹ Staff understands that prior to designation as an ETC that this Commission must consider several factors prior to granting this status to the requesting telecommunications company. At this time Staff believes that these issues raised by Clear Talk and Nextel Partners' filings can be addressed by using Modified Procedure (processing by written comments) under the Commission's Rules of Procedure. However, depending on how proceedings surrounding these filings develop, Staff reserves its right to request further procedure to handle these matters should the need arise.

Because the issues raised by the Clear Talk and Nextel Partners' filings raise substantially similar issues, is of interest to several parties and is one of first impression before the Commission in Idaho, Staff recommends that the Commission process this case in one joint proceeding. Staff believes that proceeding in this manner is the most efficient option at this time. Should the Commission choose to process these matters jointly, Staff recommends that the Commission issue a Joint Notice of Application and Modified Procedure with a 28-day period for interested persons and parties to submit written comments.

Finally, after reviewing the Idaho Telephone Association's Petitions to Intervene, Staff recommends that the Commission grant them.

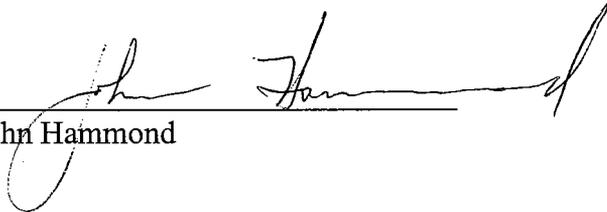
¹ Public Notice – *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Designation Process*. CC Docket No. 96-45. Re al. February 7, 2003.

COMMISSION DECISION

Does the Commission wish to process these filings made by Nextel Partners and IAT Communications, Inc. dba Clear Talk in a joint proceeding?

If so, does the Commission wish to proceed by Modified Procedure and issue a Joint Notice of Applications and Notice of Modified Procedure that would establish a 28-day period to submit written comments on these filings?

Does the Commission wish to grant the Idaho Telephone Association's Petitions to Intervene in these proceedings?



John Hammond

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