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August 26, 2004

Missouri Public Service Commission
Attn: Dale Hardy Roberts, Secretary of the Commission
PO Box 360
Jefferson City, MO 65102-0360

Re: Case No. TO-2003-0531
Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular

Dear Mr. Roberts:

On August 25, 2004, The Wireline Competition Bureau of the Federal Communications Commission ("FCC") issued an order *In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. dba Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier In the states of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 04-2667 (rel. August 25, 2004), ("*Nextel Order*"). That supplemental authority was not available at the time when Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular ("MMC") filed its *Petition for Reconsideration and Application for Rehearing*. While consistent with the holdings in the FCC's *Virginia Cellular Order*,¹ and *Highland Cellular Order*,² in the *Nextel Order* the FCC addressed issues upon which the Missouri Public Service Commission ("MPSC") decided the subject case. The MPSC decision in the instant case is at odds with this latest FCC holding, further supporting MMC's request for reconsideration and rehearing.

¹ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004), (Exhibit No. 10), ("*Virginia Cellular Order*").

² *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004), ("*Highland Cellular Order*").

Specifically, the FCC has made it clear that commitments, comparable to those made by MMC, are sufficient to meet the more stringent public interest requirements of the applicable statute with respect to service in areas served by rural exchange carriers. Moreover, the FCC expressly dismissed arguments, such as those advanced in the MMC case by the intervenors, that there would be no competitive or other public interest benefit from designating an existing CMRS carrier as an ETC because that carrier was already offering service.

Other commenters argue that the Commission should not designate Nextel as an ETC because such designation will not increase competition. They argue that Nextel is not a new entrant in the various markets and other CMRS operators are currently offering service in the designated service areas. [footnote omitted] We disagree. Quality service available at just, reasonable, and affordable rates is a fundamental principle of the Commission's universal service policies. [footnote omitted] Although Nextel and other CMRS operators may already offer service in the subject markets, designating Nextel as an ETC will further the Commission's universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for customers within the study areas of its ETC designation. (*Nextel Order* at ¶20).

The MPSC holding in its Order in the instant case is inconsistent with this FCC determination. (MPSC Order at p.22)

The FCC also considered specific showings, comparable to those made by MMC in the instant case, and found that grant of the requested ETC designation would serve the public interest. Specifically, the FCC looked at the proposed network enhancement and service offerings, coupled with the much larger local calling area being offered by the CMRS carrier and the benefits of mobility, especially in the context of "...access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities" (*Nextel Order* at ¶ 18) and found that such a showing satisfied the more stringent statutory public interest requirements for ETC designation in areas served by rural local exchange carriers.

Lastly, in considering the impact that designation of MMC as an ETC would have on the Universal Service Fund, the MPSC compared the burden placed on the USF by grant of MMC's ETC designation (0.20% of the total high cost support) as compared to the burden placed on the USF by the grant of ETC designation in the *Virginia Cellular Order* (0.105%) (MPSC Order at p. 23). In *Nextel*, the FCC looked at the potential impact on the USF and found that even "...assuming that Nextel captures *each and every* customer located in the

affected study areas, the overall size of the high-cost support mechanism would not be significantly increased” (*Nextel Order* at ¶ 21) (emphasis added, footnote omitted) because the total amount of high cost support that could be received (*in only one of the states in which the FCC granted Nextel ETC status*) would be “...approximately 1.88% of the total high-cost support available to all ETCs.” (*Nextel Order* at footnote 69). Accordingly, the FCC has unambiguously held that a potential burden on the USF **94 times greater** than that which the MMC designation would place on the fund, is not a significant burden on the USF.

In light of the foregoing, MMC submits that the latest FCC Order, is wholly consistent with the arguments set forth in MMC’s *Petition for Reconsideration and Application for Rehearing*, and provides precedent showing specific error on the part of the MPSC, consistent with that argued by MMC.

Very truly yours,

LATHROP & GAGE L.C.

- Paul DeFord - (by dl)

By:

Paul S. DeFord

PSD/dl
Enclosure

cc: Counsel for all parties of record

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
NPCR, Inc. d/b/a Nextel Partners)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the state of Alabama)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the state of Florida)	
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Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the state of Georgia)	
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Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the state of New York)	
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Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Commonwealth of Pennsylvania)	
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Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the state of Tennessee)	
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Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Commonwealth of Virginia)	

ORDER

Adopted: August 25, 2004

Released: August 25, 2004

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petitions of NPCR, Inc. d/b/a Nextel Partners (Nextel) to be designated as an eligible telecommunications carrier (ETC) for the requested service areas in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia, pursuant to section 214(e)(6) of the

Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Nextel, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1) to be designated as an ETC.²

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”³ Pursuant to section 214(e)(1), 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.⁴

¹See NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed Apr. 4, 2003 (AL Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed July 16, 2003 (AL Amendment); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed Mar. 24, 2004 (AL March 24 Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, filed Sept. 16, 2003 (FL Petition); Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, filed Sept. 23, 2003 (FL Sept. 23 Supplement); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (FL March 24 Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, filed July 10, 2003 (GA Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, filed Oct. 28, 2003 (GA Amendment I); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (GA March 24 Supplement); NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of New York, filed Apr. 3, 2003 (NY Petition); Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, filed Apr. 9, 2003 (NY Erratum); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, filed May 28, 2003 (NY Amendment I); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, filed July 16, 2003 (NY Amendment II); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (NY March 24 Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, filed Apr. 3, 2003 (PA Petition); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (PA Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed June 12, 2003 (TN Petition); Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed July 1, 2003 (TN Erratum I); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed July 16, 2003 (TN Amendment); Affidavit of NPCR, Inc. from Donald Manning, NPCR, Inc., filed Oct. 1, 2003 (TN Affidavit I); Affidavit of NPCR, Inc. from Donald Manning, NPCR, Inc., filed Oct. 1, 2003 (TN Affidavit II); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (TN March 24 Supplement); Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed Apr. 19, 2004 (TN Erratum II); Second Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed June 29, 2004 (TN June 29 Erratum); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Apr. 23, 2003 (VA Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed June 10, 2003 (VA Amendment I); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Nov. 24, 2003 (VA November 24 Amendment); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (VA March 24 Supplement). *See also* 47 U.S.C. § 214(e)(6).

²47 U.S.C. § 214(e)(1).

³47 U.S.C. § 254(e).

⁴47 U.S.C. § 214(e)(1).

3. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.⁵ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”⁶ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).⁷ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁸ The Wireline Competition Bureau (Bureau) has delegated authority to perform ETC designations.⁹

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner meets the definition of a “rural telephone company” pursuant to section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹⁰

5. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹¹ Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to

⁵ 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order*, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁶ 47 U.S.C. § 214(e)(6). See, e.g., *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

⁷ 47 U.S.C. § 214(e)(6).

⁸ *Id.*

⁹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*ETC Procedures PN*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

¹⁰ See *ETC Procedures PN*, 12 FCC Rcd at 22948-49; 47 U.S.C. § 3(37). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon. pending.

¹¹ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

the state commission's jurisdiction.¹² The requirement to provide an "affirmative statement" ensures that the state commission has had "a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers."¹³

6. On January 22, 2004, the Commission released the *Virginia Cellular Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.¹⁴ In that Order, the Commission utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements on Virginia Cellular.¹⁵ The Commission further stated that the framework enunciated in the *Virginia Cellular Order* would apply to all ETC designations for rural areas pending further action by the Commission.¹⁶ Following the framework established in the *Virginia Cellular Order*, on April 12, 2004, the Commission released the *Highland Cellular Order*, which granted in part and denied in part the petition of Highland Cellular, Inc., to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.¹⁷ In the *Highland Cellular Order*, the Commission concluded, among other things, that a telephone company in a rural study area may not be designated as a competitive ETC below the wire center level.¹⁸

C. Nextel Petitions

7. Pursuant to section 214(e)(6), Nextel filed with this Commission seven petitions and amendments thereto, seeking designation as an ETC in study areas served by both rural and non-rural incumbent local exchange carriers (LECs) in the states of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia.¹⁹ The Bureau released public notices seeking comment on these petitions.²⁰ Several commenters filed pleadings opposing the petitions.²¹ In light of the new ETC

¹² *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

¹³ *Id.*

¹⁴ See *Virginia Cellular Order*, 19 FCC Rcd at 1564, para. 1.

¹⁵ See *id.*, 19 FCC Rcd at 1565, 1575, 1575-76, 1584-85, paras. 4, 27, 28, 46.

¹⁶ See *id.*, 19 FCC Rcd at 1565, para. 4.

¹⁷ See *Highland Cellular Order*, 19 FCC Rcd at 6422, para. 1.

¹⁸ See *id.*, 19 FCC Rcd at 6438, para. 33.

¹⁹ See *supra* note 1. Nextel's initial petitions for ETC designation in the states of Tennessee and Virginia requested redefinition of certain study areas. See TN Petition at 9-10 and VA Petition at 10-11; see also 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(c)(1). Nextel subsequently requested that the Commission disregard its redefinition requests. See TN Erratum and VA Amendment.

²⁰ See *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14593 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, Public Notice, CC Docket No. 96-45, DA 03-4113 (rel. Dec. 30, 2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 16370 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14590 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 11530 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 20244 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 11792 (2003).

designation framework established in the *Virginia Cellular Order*, on March 9, 2004, Nextel filed supplements to its ETC petitions.²² On April 2, 2004, the Bureau released a public notice seeking comment concerning all supplemented ETC petitions, including the petitions filed by Nextel.²³

III. DISCUSSION

8. After careful review of the record before us, we find that Nextel has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for its licensed service areas described herein.

A. Commission Authority to Perform the ETC Designation

9. We find that Nextel has demonstrated that the Commission has authority to consider its seven petitions under section 214(e)(6) of the Act.²⁴ Nextel's petitions each include an affirmative statement from the relevant state commissions stating that requests for designation as eligible telecommunications carriers should be sought from the Commission.

10. We note that the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed reply comments stating that although it submitted a letter stating its intent to refrain from exercising jurisdiction over Nextel for ETC designation purposes, it has not relinquished its jurisdiction altogether for all CMRS carriers.²⁵ Specifically, the Pennsylvania Commission expresses concern that it did not intend its letter to operate as a pronouncement of its position on jurisdiction for future ETC designations for all wireless carriers.²⁶ We further note that subsequently, the Pennsylvania Commission filed a letter stating that it does not object to the Commission's consideration of Nextel's petition as long as the effect of its letter is limited solely to Nextel's ETC designation request.²⁷ We therefore find it is appropriate to consider Nextel's request for ETC designation in Pennsylvania. Moreover, as requested by the Pennsylvania Commission, the effect of the Pennsylvania Commission's letter indicating that it lacks jurisdiction in this proceeding is limited solely to Nextel's ETC petition.

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²¹ See Appendix A for a list of entities filing comments and reply comments associated with the seven petitions for ETC designation.

²² See AL March 24 Supplement; FL March 24 Supplement; GA March 24 Supplement; NY March 24 Supplement; PA March 24 Supplement; TN March 24 Supplement; VA March 24 Supplement.

²³ See *Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket No. 96-45, 19 FCC Rcd 6405 (2004).

²⁴ AL Petition at Attachment 2; FL Petition at Attachment 2; GA Petition at Attachment 2; NY Petition at Attachment 2; PA Petition at Attachment 2; TN Petition at Attachment 2; VA Petition at Attachment 2.

²⁵ Pennsylvania Commission Reply Comments at 3.

²⁶ Pennsylvania Commission Supplement Comments at 2-3. The Pennsylvania Commission further urges the Commission to delay action on Nextel's ETC petition until the conclusion of two proceedings concerning this matter. See *Petition of Cellco Partnership d/b/a Verizon Wireless to Terminate Section 251(f)(1)(B) Rural Exemptions of Bentleyville Communication Corporation, et al.*, Docket Nos. P-00021995 through P-00022015 (Verizon Wireless seeking termination of rural exemption for 21 rural incumbent ILECs) and *In Re: Petition for Declaratory Order of AT&T Wireless Services Inc.*, Docket No. P-00042087 (AT&T requesting Pennsylvania Commission declaratory order that it does not regulate wireless carriers for purposes of ETC designation).

²⁷ Letter from Elizabeth Lion Januzzi, Pennsylvania Public Utility Commission, to Marlene H. Dortch, FCC, filed June 29, 2004.

B. Offering and Advertising the Supported Services

11. Offering the Services Designated for Support. Nextel has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Nextel is authorized to provide cellular radiotelephone service in the 800 MHz band.²⁸ Nextel certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in section 54.101(a) of the Commission's rules.²⁹ Nextel has also certified that, in compliance with rule section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.³⁰ Furthermore, Nextel has committed to commitments that closely track those set forth in the *Virginia Cellular Order* and *Highland Cellular Order*, including: (1) annual reporting of progress towards build-out plans, unfulfilled service requests, and complaints per 1,000 handsets; (2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas outside existing network coverage; and (3) specific commitments to construct new cell sites in areas outside its network coverage.³¹

12. We reject the claims of certain commenters that Nextel does not provide the required services and functionalities supported by the universal service mechanism. First, commenters argue that Nextel fails to offer supported services, such as the Lifeline and Link-Up programs, and suggest that the participation rate in Lifeline/Link-Up will not increase even if Nextel was to offer the associated discounts.³² We note, however, that Nextel states that it will participate in the Lifeline and Link-Up programs and will otherwise comply with all Commission rules governing universal service programs.³³ Second, notwithstanding commenters' allegations,³⁴ Nextel makes clear that it does and will continue to implement E911 requirements consistent with Commission rules and orders and local Public Safety Answering Point (PSAP) requests.³⁵ In addition, other commenters assert that Nextel should be required

²⁸ AL Amendment; FL Petition at 1; NY Amendment II; PA Petition at 1; TN Amendment; VA Petition at 1.

²⁹ AL Petition at 2-4; FL Petition at 2-4; GA Petition at 2-4; NY Petition at 2-4; PA Petition at 2-4; TN Petition at 2-4; VA Petition at 2-4.

³⁰ AL Petition at 7; FL Petition at 8; GA Petition at 7-8; NY Petition at 7-8; PA Petition at 7; TN Petition at 8; VA Petition at 8. 47 C.F.R. § 54.405. We note that ETCs must comply with state requirements in states that have Lifeline programs. See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302, 8320 at para. 29 (2003).

³¹ Nextel has provided detailed information on how it will use universal service support to construct cell sites throughout the states in which it is designated as an ETC. AL March 24 Supplement at Exhibit 2; FL March 24 Supplement at Exhibit 2; GA March 24 Supplement at Exhibit 2; NY March 24 Supplement at Exhibit 2; PA March 24 Supplement at Exhibit 2; TN March 24 Supplement at Exhibit 2; VA March 24 Supplement at Exhibit 2; see also Letter from Catalano & Plache, PLLC, Counsel for NCPR, Inc. d/b/a Nextel, to Marlene H. Dortch, FCC (filed June 2, 2004). Specifically, Nextel provides the location by study area of new cell sites, timeframe for commencement and completion of build-out plans, populations served by new cell sites, and cost of build-out plans. See *id.* In 2004, Nextel will use universal service support to construct 13 cell sites in Alabama, 12 cell sites in Florida, 13 cell sites in Georgia, 19 cell sites in New York, 10 cell sites in Pennsylvania, 3 cell sites in Tennessee, and 16 cell sites in Virginia. *Id.* We recognize that these plans may change over time depending on consumer demand, fluctuation in universal service support, and related factors. See, e.g., *Virginia Cellular Order*, 19 FCC Rcd at 1571, para. 16.

³² See, e.g., NY State Telecom Comments at 8.

³³ AL Petition at 7; FL Petition at 8; GA Petition at 7-8; NY Petition at 7-8; PA Petition at 7; TN Petition at 8; VA Petition at 8.

³⁴ See, e.g., FW&A Comments at 9; TDS Supplement Comments at 8.

³⁵ AL Petition at 3, FL Petition at 3-4, GA Petition at 3, NY Petition at 3-4, PA Petition at 3-4, TN Petition at 3, VA Petition at 3-4. A valid PSAP request triggers a wireless carrier's obligation to provide enhanced 911 (E911) service to that PSAP. See *City of Richardson*, Order, CC Docket No. 94-102, 16 FCC Rcd 18982 (2001). In addition,

(continued....)

to offer unlimited local calling to mirror the services offered by wireline carriers or to limit the number of minutes a customer may use to coincide with the number of minutes allocated to the plan selected so that customers do not incur higher charges.³⁶ Such requirements are unnecessary because the Commission has not established a minimum local usage requirement and Nextel has pledged compliance with any and all minimum usage requirements required by applicable law.³⁷ Nextel also states that local usage is included in all of its calling plans.³⁸ Lastly, some commenters argue that Nextel does not provide equal access to interexchange service.³⁹ Section 54.101(a)(7) of the Commission's rules states that one of the supported services is access to interexchange services, not equal access to those services.⁴⁰ Accordingly, we find sufficient Nextel's showing that it will offer access to interexchange services.

13. Offering the Supported Services Using a Carrier's Own Facilities. Nextel has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁴¹ Nextel states that it intends to provide the supported services using its existing network infrastructure.⁴²

14. Advertising Supported Services. Nextel has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.⁴³ One commenter, however, contends that Nextel does not identify media to be used to advertise the supported services.⁴⁴ We disagree. In its petitions, Nextel states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis, in newspapers, magazines, television, and radio in accordance with section 54.201(d)(2) of the Commission's rules.⁴⁵ Moreover, Nextel has committed to specific methods to publicize the

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Nextel must meet certain company-specific handset deployment benchmarks. *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced E911 Emergency Calling Systems, Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc.*, Order, CC Docket No. 94-102, 16 FCC Rcd 18277 (2001).

³⁶See, e.g., CenturyTel Supplement Comments at 4; FW&A Comments at 9, 13; NASUCA Comments at 2.

³⁷See AL Petition at 3; FL Petition at 3; GA Petition at 3; NY Petition at 3; PA Petition at 3; TN Petition at 3; VA Petition at 3.

³⁸See AL Petition at 3; FL Petition at 3; GA Petition at 3; NY Petition at 3; PA Petition at 3; TN Petition at 3; VA Petition at 3.

³⁹See, e.g., NASUCA Comments at 2; NY State Telecom Comments at 9; PA Telephone Assn. Comments at 8.

⁴⁰47 C.F.R. § 54.101(a)(7). We note that in July 2002, four members of the Joint Board recommended adding equal access to interexchange service as a supported service. *See Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 17 FCC Rcd 14095, 14124-27, paras. 75-86 (2002). In July 2003, the Commission decided to defer consideration of this issue pending resolution of the Commission's proceeding examining the rules relating to high-cost universal service support in competitive areas. *See Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, CC Docket No. 96-45, 18 FCC Rcd 15090, 15104, para. 33 (2003). *See also infra* para. 21 and n.66.

⁴¹47 C.F.R. § 214(e)(1)(A).

⁴²See AL Petition at 2; FL Petition at 2; GA Petition at 2; NY Petition at 2; PA Petition at 2; TN Petition at 2; VA Petition at 2.

⁴³47 C.F.R. § 214(e)(1)(B).

⁴⁴TDS Supplement Comments at 8-9.

⁴⁵See AL Petition at 5; FL Petition at 5-6; GA Petition at 5; NY Petition at 5; PA Petition at 5; TN Petition at 5; and VA Petition at 5. 47 C.F.R. § 54.201(d)(2).

availability of Lifeline and Link-Up services and improved service in unserved or underserved areas.⁴⁶

C. Public Interest Analysis

15. We conclude that it is “consistent with the public interest, convenience, and necessity,” as required by section 214(e)(6) of the Act, to designate Nextel as an ETC in the study areas served by certain rural telephone companies and non-rural telephone companies in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia.⁴⁷ In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.⁴⁸ Nextel has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

16. Non-Rural Study Areas. We conclude, as required by section 214(e)(6) of the Act, that it is “consistent with the public interest, convenience, and necessity” to designate Nextel as an ETC for its requested service area that is served by non-rural telephone companies, as provided in Appendix B.⁴⁹ We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act.⁵⁰ In the *Virginia Cellular Order* and the *Highland Cellular Order*, however, the Commission determined that designation of an additional ETC in a non-rural telephone company’s study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act does not necessarily satisfy the public interest in every instance.⁵¹ Nextel’s public interest showing here is sufficient, based on the detailed commitments Nextel has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Nextel has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.⁵²

17. Rural Study Areas. We also conclude, as required by section 214(e)(6) of the Act, that it is “consistent with the public interest, convenience, and necessity” to designate Nextel as an ETC for its requested service area that is served by rural telephone companies, as provided in Appendix C.⁵³ In considering whether designation of Nextel as an ETC in areas served by rural telephone companies will serve the public interest, we have considered whether the benefits of an additional ETC in such study areas outweigh any potential harms. In determining whether designation of a competitive ETC in a rural

⁴⁶See AL March 24 Supplement at 6-7; FL March 24 Supplement at 6-7; GA March 24 Supplement at 6-7; NY March 24 Supplement at 6-7; PA March 24 Supplement at 6-7; TN March 24 Supplement at 6-7; VA March 24 Supplement at 6-7.

⁴⁷47 U.S.C. § 214(e)(6). See Appendices B and C.

⁴⁸See *Highland Cellular Order* 19 FCC Rcd at 6431, para. 20; *Virginia Cellular Order*, 19 FCC Rcd at 1574-75, para. 26.

⁴⁹See 47 U.S.C. § 214(e)(6). See also Appendix B.

⁵⁰See, e.g., *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

⁵¹See *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21.

⁵²See *Virginia Cellular Order*, 19 FCC Rcd at 1572-73, para. 21; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. See also AL March 24 Supplement; FL March 24 Supplement; GA March 24 Supplement; NY March 24 Supplement; PA March 24 Supplement; TN March 24 Supplement; VA March 24 Supplement; see also *infra* paras. 24-25.

⁵³See 47 U.S.C. § 214(e)(6). See also Appendix C.

telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.⁵⁴

18. Nextel's universal service offering will provide a variety of benefits to customers. For instance, Nextel has committed to provide customers access to telecommunications and data services where they do not have access to a wireline telephone.⁵⁵ In addition, the mobility of Nextel's wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.⁵⁶ Moreover, Nextel states that it offers larger local calling areas than those of the incumbent LECs it competes against, which could result in fewer toll charges for Nextel's customers.⁵⁷ Further, Nextel has made service quality commitments comparable to those made by petitioners in the *Virginia Cellular Order* and *Highland Cellular Order*, including compliance with the Cellular Telecommunications Industry Association (CTIA) Consumer Code for Wireless Service.⁵⁸

19. We reject the arguments of certain commenters that Nextel does not offer service throughout the study areas where it seeks designation and therefore should not be designated in these areas.⁵⁹ Specifically, these commenters allege that service is not offered in many of the zip codes within the study areas where Nextel seeks ETC designation.⁶⁰ The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.⁶¹ Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.⁶² Another

⁵⁴See, e.g., *Highland Cellular Order*, 19 FCC Rcd at 6435, para. 28; *Virginia Cellular Order*, 19 FCC Rcd at 1573, para. 22.

⁵⁵See AL March 24 Supplement at 3-4; FL March 24 Supplement at 3-4; GA March 24 Supplement at 3-4; NY March 24 Supplement at 3-4; PA March 24 Supplement at 3-4; TN March 24 Supplement at 3-4; VA March 24 Supplement at 3-4.

⁵⁶See *Virginia Cellular Order*, 19 FCC Rcd at 1576, para. 29. See also *Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

⁵⁷See AL Petition at 7; FL Petition at 7-8; GA Petition at 7; NY Petition at 7; PN Petition at 7; TN Petition at 7; VA Petition at 7.

⁵⁸See AL March 24 Supplement at 2 and Exhibit 1; FL March 24 Supplement at 2 and Exhibit 1; GA March 24 Supplement at 2 and Exhibit 1; NY March 24 Supplement at 2 and Exhibit 1; PA March 24 Supplement at 2 and Exhibit 1; TN March 24 Supplement at 2 and Exhibit 1; VA March 24 Supplement at 2 and Exhibit 1. *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

⁵⁹See, e.g., GA Telephone Assn. Comments at 5; NY State Telecom Supplement Comments at 3, 7-8; TDS Supplement Comments at 7-8; PA Telephone Assn. at 4-8; Commonwealth Telephone at 2-3; NY State Telecom Comments 5-7; FW&A Comments at 10.

⁶⁰See, e.g., PA Telephone Assn. at 6; NY State Telecom Comments at 5-6.

⁶¹See *Declaratory Ruling*, 15 FCC Rcd at 15175, para. 17.

commenter asserts that Nextel excludes residences from its commitment and intends to serve only business customers.⁶³ We disagree. Nextel's filing does not distinguish between the types of customers with regard to the commitments to improve its network in the study areas for which it seeks ETC designation.⁶⁴

20. Other commenters argue that the Commission should not designate Nextel as an ETC because such designation will not increase competition. They argue that Nextel is not a new entrant in the various markets and other CMRS operators are currently offering service in the designated service areas.⁶⁵ We disagree. Quality service available at just, reasonable, and affordable rates is a fundamental principle of the Commission's universal service policies.⁶⁶ Although Nextel and other CMRS operators may already offer service in the subject markets, designating Nextel as an ETC will further the Commission's universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for customers within the study areas of its ETC designation.

21. The Commission is seeking comment on the *Recommended Decision* of the Federal Joint-Board on Universal Service (Joint Board) concerning the process for designation of ETCs and the Commission's rules regarding high-cost universal service support.⁶⁷ Commenters argue that, in light of the impact that ETC designations have on the universal service fund, the Commission should not rule on any pending ETC petitions until the completion of the rulemaking proceeding.⁶⁸ We believe that grant of these ETC designations will not dramatically burden the universal service fund. For example, even assuming that Nextel captures each and every customer located in the affected study areas, the overall

(...continued from previous page)

⁶²See AL March 24 Supplement; FL March 24 Supplement; GA March 24 Supplement; NY March 24 Supplement; PA March 24 Supplement; TN March 24 Supplement; VA March 24 Supplement; see also Virginia Cellular Petition at 2, 17 and Virginia Cellular October 3 Supplement at 2, Virginia Cellular November 12 Supplement at 4-5 and Attachment.

⁶³TDS Supplement Comments at 7.

⁶⁴See AL March 24 Supplement 4-9; FL March 24 Supplement 4-9; GA March 24 Supplement 4-9; NY March 24 Supplement 4-9; PA March 24 Supplement 4-9; TN March 24 Supplement 4-9; VA March 24 Supplement 4-9.

⁶⁵See, e.g., CenturyTel Comments at 2; CenturyTel Supplement Comments at 3-4; Commonwealth Telephone Comments at 5; Frontier Comments at 5; NY State Telecom at 6.

⁶⁶See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8839, para. 112 (1997) (*First Report and Order*) ("We recognize affordable rates are essential to inducing consumers to subscribe to telephone service, and also that increasing the number of people connected to the network increases the value of the telecommunications network."); 47 U.S.C. § 254(b).

⁶⁷*Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (*ETC High-Cost NPRM*); *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Joint Board Recommended Decision*). Among other things, the Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider when designating ETCs under section 214 of the Act. *Joint Board Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

⁶⁸See, e.g., NY State Telecom Comments at 11-14; OPASTCO Comments at 2. Verizon filed an opposition to all pending ETC petitions, including Nextel Partners', arguing that, among other things, pending ETC petitions should not be acted upon until completion of the Commission's proceeding concerning the ETC designation process and the related rules regarding high-cost universal service support. See Verizon Supplement Comments at 1-5. If the Commission does not stay the pending petitions, NASUCA asks that the Commission explicitly state that the continuing eligibility of the petitioners for ETC designation is contingent upon any future changes to the rules and the rules would be binding on all existing ETCs and those requesting designation. See NASUCA Comments at 2.

size of the high-cost support mechanisms would not significantly increase.⁶⁹ Other commenters suggest that the framework articulated in the *Virginia Cellular Order* should be expanded to require competitive ETCs to demonstrate their need for universal service support, to require a cost-benefit analysis based on the overall impact of the USF, and to contain wireless calling plan requirements.⁷⁰ Although these are important issues, we decline to delay ruling on pending ETC petitions and to impose additional requirements at this time. Nevertheless, we continue to be mindful of the impact on the universal service fund due to the rapid growth in the number of competitive ETCs. The outcome of the rulemaking proceeding could potentially impact, among other things, continued ETC designations, the amount of support that Nextel and other competitive ETCs receive in the future, and local calling plan benchmarks.

22. We further disagree with Verizon's argument that we should not designate any additional competitive ETCs because it could have a significant impact on the access charge plan established by the Commission's *CALLS Order*.⁷¹ In the voluntarily negotiated CALLS plan, price cap carriers, *inter alia*, agreed to establish a \$650 million target for interstate access support. Similar to other types of universal service support, interstate access support is portable to competitive ETCs.⁷² Consequently, because interstate access support is targeted to \$650 million, when a competitive ETC receives interstate access support, there is a corresponding reduction in support available to incumbent carriers. As the CALLS plan was being considered, portability of support to competitive ETCs and its relation to the \$650 million target was contemplated.⁷³ Accordingly, the CALLS plan is functioning as contemplated by the agreement. We further note that the CALLS plan was designed for a five-year period, which ends in 2005.⁷⁴ As part of its consideration of the appropriate regulatory mechanism to replace the CALLS plan, the Commission can examine whether the interstate access support mechanism remains sufficient.⁷⁵

D. Designated Service Areas

23. We designate Nextel as an ETC in the requested service areas in Alabama, Florida, Georgia, Tennessee, and Virginia served by non-rural telephone companies, as listed in Appendix B.⁷⁶ In addition, we designate Nextel as an ETC in the requested service areas in Alabama, Florida, Georgia,

⁶⁹For example, out of the seven states in which Nextel seeks ETC designation, the incumbent carriers in Alabama receive the most high-cost support. The total amount of high-cost support received by such carriers is approximately 1.88% of the total high-cost support available to all ETCs.

⁷⁰See, e.g., CenturyTel Supplement Comments at 3-4; Frontier Comments at 6-9; GA Telephone Assn. Comments at 4-5; FW&A Comments at 9, 11, 14; NASUCA Comments at 2-3; NTELOS Comments at 2; NY State Telecom Comments at 11-14; OPASTCO Comments at 2; PA Telephone Assn. Comments at 8-9; TDS Supplement Comments at 8-10.

⁷¹See Verizon Opposition at 2-3; *Access Charge Reform*, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249, Eleventh Report and Order, CC Docket No 96-45, 15 FCC Rcd 12962 (2000) (subsequent history omitted) (*CALLS Order*).

⁷²See 47 C.F.R. § 54.307(a).

⁷³See CTIA Supplement Reply Comments at 4-5 (*quoting* Comments of Coalition for Affordable Local and Long Distance Services (CALLS), CC Docket Nos. 94-1, 96-45, 96-262, 99-249, filed Nov. 12, 1999).

⁷⁴See *CALLS Order*, 15 FCC Rcd at 12977, 13046, paras. 35-36, 201.

⁷⁵See *id.* at 12977, para. 36 ("[A]s the term of the CALLS Proposal nears its end, we envision that the Commission will conduct a proceeding to determine whether and to what degree it can deregulate price cap LECs to reflect the existence of competition. At that time, the Commission can also examine whether the interstate access universal service support mechanism remains sufficient.").

⁷⁶The designated "service area" for an ETC in an area served by a rural telephone company must be the rural telephone company's study area unless a different definition of the rural telephone company's service area is established by the Commission and the states as provided under the Act. See 47 U.S.C. § 214(e)(5).

New York, Pennsylvania, Tennessee, and Virginia served by rural telephone companies, as listed in Appendix C.⁷⁷ As explained above, Nextel's service area for each rural telephone company encompasses the entire study area of each rural telephone company.⁷⁸

E. Regulatory Oversight

24. Nextel is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under sections 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement.⁷⁹ Nextel has certified that, consistent with sections 54.313 and 54.314 of the Commission's rules, all federal high-cost support will be "used only for the provision, maintenance and upgrading of facilities and services for which support is intended pursuant to Section 254(e)" of the Act in the areas for which Nextel is designated as an ETC.⁸⁰ In addition, Nextel has certified pursuant to sections 54.809 and 54.904 of the Commission's rules that all interstate access universal service support and all interstate common line support provided will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁸¹ Nextel has further requested that the Commission find that Nextel has met the appropriate certification filing deadline in order for it to begin receiving support as of its ETC designation date.⁸² Accordingly, we treat Nextel's certifications as timely so that it can begin receiving universal service support as of the date of its ETC designation.⁸³

25. Separate and in addition to its annual certification filing under rule sections 54.513 and 54.314, Nextel has committed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers were unfulfilled for the past year.⁸⁴ We require Nextel to submit these additional data to the Commission and USAC on October

⁷⁷See Appendix C.

⁷⁸See *supra* para. 19.

⁷⁹47 C.F.R. §§ 54.313, 54.314.

⁸⁰See AL Petition at 8-9; FL Petition at 9-10; GA Petition at 9; NY Petition at 8-9; PA Petition at 8-9; TN Petition at 11; VA Petition at 11-12; *see also* TN Affidavit I and TN Affidavit II.

⁸¹47 C.F.R. §§ 54.809, 54.904; *see also* AL Petition at 8-9; FL Petition at 9-10; GA Petition at 9; NY Petition at 8-9; PA Petition at 8-9; TN Petition at 11; VA Petition at 11-12.

⁸²See AL Petition at 8-9; FL Petition at 9-10; GA Petition at 9; NY Petition at 8-9; PA Petition at 8-9; TN June 29 Erratum; VA Petition at 11-12.

⁸³Sections 54.313 and 54.314 provide that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. 47 C.F.R. §§ 54.313(d)(3), 54.314(d)(3). If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. *See id.* In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e). *See* 47 C.F.R. §§ 54.313(b); 54.314(b). Moreover, although we accept Nextel's certifications as timely so that it can receive support as of its ETC designation date, consistent with the Commission's rules, the relevant state commissions are not precluded from filing future certifications on behalf of Nextel stating that universal service support is being used for its intended purposes. *See* 47 C.F.R. §§ 54.313, 54.314.

⁸⁴See AL March 24 Supplement at 3-7; FL March 24 Supplement at 3-7; GA March 24 Supplement at 3-7; NY March 24 Supplement at 3-7; PA March 24 Supplement at 3-7; TN March 24 Supplement at 3-7; VA March 24 Supplement at 3-7. Certain commenters argue that Nextel will not use high-cost support for its intended purpose. *See, e.g.,* CenturyTel Supplement Comments at 5. We find that the above commitments alleviate such concerns.

1 of each year beginning October 1, 2005.⁸⁵ We find that reliance on Nextel's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.⁸⁶ We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Nextel satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC.⁸⁷ Nextel will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Nextel fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.⁸⁸ The Commission also may assess forfeitures for violations of Commission rules and orders.⁸⁹

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

26. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁹⁰ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.⁹¹ Nextel has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁹² We find that Nextel has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section

⁸⁵Nextel's initial submission concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from the date ETC designation is granted through June 30, 2005. Future submissions concerning consumer complaints and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year.

⁸⁶*Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999). In *TOPUC v. FCC*, the Fifth Circuit held that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. *See id.* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

⁸⁷47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

⁸⁸*See Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. *See also* 47 U.S.C. § 254(e).

⁸⁹*See* 47 U.S.C. § 503(b).

⁹⁰47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

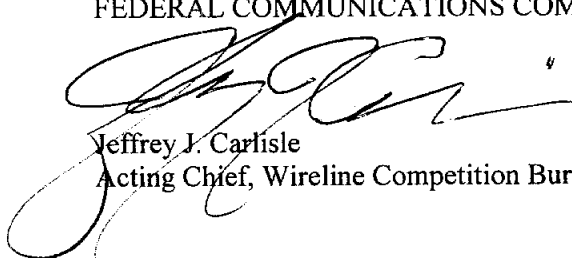
⁹¹*See ETC Procedures PN*, 12 FCC Rcd at 22949. Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

⁹²*See* AL Petition at 8 and Attachment 5; FL Petition at and Attachment 4; GA Petition at 8 and Attachment 4; NY Petition at 8 and Attachment 5; PA Petition at 8 and Attachment 5; TN Petition at 11 and Attachment 4; VA Petition at 11 and Attachment 5.

214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, NCPR, Inc. d/b/a Nextel Partners IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia to the extent described herein.

28. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Alabama Public Service Commission, Florida Public Service Commission, Georgia Public Service Commission, New York Department of Public Service, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, Virginia State Corporation Commission, and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION



Jeffrey J. Carlisle
Acting Chief, Wireline Competition Bureau

Appendix A**Parties Filing Comments, Reply Comments, Oppositions, Supplemental Comments****Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Alabama**Comments

CenturyTel, Inc. (CenturyTel)

Organization for the Promotion and Advancement of Small Telecommunications Companies
(OPASTCO)Reply Comments

NPCR, Inc. d/b/a/ Nextel Partners (Nextel Partners)

Opposition

Verizon Communications, Inc. (Verizon)

Supplemental Comments

Verizon

TDS Telecommunications Corp. (TDS)

**Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Florida**Comments

OPASTCO

National Association of State Utility Consumer Advocates (NASUCA)

Fred Williams & Associates, Inc. (FW&A)

TDS

Reply Comments

Nextel Partners

**Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Georgia**Comments

Frontier Communications (Frontier)

Georgia Telephone Association (GA Telephone)

OPASTCO

Reply Comments

Nextel Partners

Opposition

Verizon

Supplemental Comments

Frontier
TDS
Verizon

**Petition for Designation as an
Eligible Telecommunications Carrier
in the state of New York**

Comments

Frontier
New York State Telecommunications Association, Inc. (NY Telecom)
OPASTCO

Reply Comments

Nextel Partners

Opposition

Verizon

Supplemental Comments

NY Telcom
TDS
Verizon

**Petition for Designation as an
Eligible Telecommunications Carrier
in the Commonwealth of Pennsylvania**

Comments

Commonwealth Telephone Company (Commonwealth Telephone)
Pennsylvania Telephone Association (PA Telephone)

Reply Comments

Nextel Partners
OPASTCO
Pennsylvania Public Utility Commission (Pennsylvania Commission)

Supplemental Comments

TDS
Pennsylvania Commission
Verizon

**Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Tennessee**

Comments

NASUCA
OPASTCO

Reply Comments

Nextel Partners

Opposition

Verizon

Supplemental Comments

Verizon

**Petition for Designation as an
Eligible Telecommunications Carrier
in the Commonwealth of Virginia**

Comments

NTELOS, Inc. (NTELOS)

Virginia Rural Southside Telephone Companies

Reply Comments

Nextel Partners

OPASTCO

Supplemental Comments

NTELOS

TDS

Verizon

Appendix B
Non-Rural Wire Centers for Inclusion in Nextel's ETC Service Areas

ALABAMA
VERIZON SACs 250281 and 250293

ABVLALXA	FYTTALXA	RCFRALXA
ACVLALXA	GDBAALXA	RDLVALXA
ANDSALXA	GENVALXA	SCBOALXA
ARITALXA	HDLDALXZ	SLCMALXA
BLBTALXA	HRFRALXA	SMSNALXA
BRNDALXA	IRSEALXA	THRSALXA
CLIOALXA	JMSNALXA	TLLSALXA
CLMAALXA	LNCLALXA	TSVLALXA
DTHNALXA	MLCYALXA	WCBGALXA
ELBAALXA	NTSLALXA	WDLYALXA
ENTRALXA	NWBCALXA	WEDWALXA
FRFNALXA	NWTNALXA	
FRHMALXA	OPPALXA	
FWRVALXA	OZRKALXA	

**ALABAMA
BELL SOUTH SAC 255181**

ALBSALMA	DDVLALMA	MOBLALBF
ALCYALMT	DORAALMA	MOBLALOS
ALVLALMA	EUFLALMA	MOBLALPR
ANTNALLE	EUTWALMA	MOBLALSA
ANTNALMT	EVRGALMA	MOBLALSE
BLFNALMA	FLRNALMA	MOBLALSF
BOAZALMA	FMTNALMT	MOBLALSH
BRHMALCH	FRHPALMA	MOBLALSK
BRHMALCP	FTDPALMA	MOBLALTH
BRHMALEL	GDSDALHS	MPVLALMA
BRHMALEN	GDSDALMT	MTGMALDA
BRHMALEW	GDSDALRD	MTGMALMB
BRHMALFO	GRDLALNM	MTGMALMT
BRHMALFS	GTVLALNM	MTGMALNO
BRHMALHW	GYVLALNM	MTVRALMA
BRAHMALMT	HLVIALMA	OPLKALMT
BRHMALOM	HNVIALLW	PDMTALMA
BRHMALOX	HNVIALMT	PHCYALFM
BRHMALRC	HNVIALPW	PHCYALMA
BRHMALTA	HNVIALRA	PNSNALMA
BRHMALVA	HNVIALRW	PRVLALMA
BRHMALWE	HNVIALUN	SELMALMT
BRHMALWL	HNVLALNM	SYLCALMT
BRTOALMA	HRBOALOM	THVLALMA
BSMRALBU	HZGRALMA	TLDGALMA
BSMRALHT	JCSNALNM	TROYALMA
BSMRALMA	JCVLALMA	TSCLALDH
BYMNALMA	JSPRALMT	TSCLALMT
CALRALMA	LFYTALRS	TSKGALMA
CHLSALMA	LGRNGAMA	VNCNALMA
CLANALMA	LNDNALMA	WBTNALNM
CLMBALMA	MCINALMA	WRRRALNM
CLMNALMA	MDSNALNM	WTMPALMA
CNTMFLLE	MNTVALNM	YORKALMA
CTRNALNM	MOBLALAP	
DCTRALMT	MOBLALAZ	

FLORIDA
BELL SOUTH SAC 215191

CHPLFLJA	LKCYFLMA	PNSCFLBL
CNTMFLLE	LYHNFLOH	PNSCFLFP
FMTNALMT	MLTNFLRA	PNSCFLHC
GCVLFLMA	MNSNFLMA	PNSCFLPB
GLBRFLMC	PACEFLPV	PNSCFLWA
HAVNFLMA	PCBHFLNT	SYHSFLCC
HLNVFLMA	PNCYFLCA	VERNFLMA
JAYFLMA	PNCYFLMA	FNFNFLMA

GEORGIA
BELL SOUTH SAC 225192

ADAIRSVL	DUBLIN	NEWNAN
ALBANY	EASTMAN	NEWTON
ATHENS	EATONTON	PELHAM
ATLANTA	FLOWEYBRCH	PINE MT
ATLANTA NE	FORSYTH	RICHLAND
ATLANTA NW	FORTVALLEY	ROCKMART
ATLANTA SO	FRANKLIN	ROME
AUGUSTA	GAINESVL	ROYSTON
BAINBRIDGE	GRANTVILLE	SANDERSVL
BARNESVL	GREENSBORO	SAVANNAH
BLACKSHEAR	GREENVILE	SENOIA
BOWDON	GRIFFIN	SMITHVILLE
BRUNSWICK	HAMILTON	SOCIALCRCL
BUFORD	HAZLEHURST	SPARKS
CALHOUN	HOGANSVL	SPARTA
CAMILLA	JACKSON	SWAINSBORO
CARROLLTON	JESUP	SYLVESTER
CATERSVL	LAGRANGE	THOMASVL
COCHRAN	LAKE PARK	TIFTON
COLUMBUS	LEESBURG	VALDOSTA
CONCORD	LUMPKIN	VIDALIA
CORDELE	LUTHERSVL	VILLA RICA
COVINGTON	MACON	WARNERRBNS
CUMMING	MADISON	WRENS
CUSSETA	MONTICELLO	WRIGHTSVL

**TENNESSEE
BELL SOUTH SAC 295185**

BLGPTNMA	KNVLTNWH	NSVLTNDO
CHTGTNBR	KNVLTNYH	NSVLTNHH
CHTGTNDT	LBNNTNMA	NSVLTNIN
CHTGTNHT	LFLTNTMA	NSVLTNMC
CHTGTNNS	LNCYTNMA	NSVLTNMT
CHTGTNRB	LODNTNMA	NSVLTNST
CHTGTNSM	LYLSTNMA	NSVLTNUN
CLEVTNMA	MAVLTNMA	OKGVKYES
CLTNTNMA	MCKNTNMA	OKRGTNMT
CLVLTNMA	MMPHTNBA	PSVWTNMT
CRVLTNMA	MMPHTNCK	PTLDTNMA
DNRGTNMA	MMPHTNCT	RRVLTNMA
FKLNTNCC	MMPHTNEL	SANGTNMT
FKLNTNMA	MMPHTNGT	SHCPTNXA
FRDNTNMA	MMPHTNMA	SMYRTNMA
FYVLTNMA	MMPHTNMT	SNVLTNMA
GRVLTNXZ	MMPHTNOA	SRVLTNMA
HCRDTNXA	MMPHTNSL	SVVLTNMT
HDVLTNMA	MMPHTNWW	SWTWTNMY
HHNWTNMA	MNCHTNMA	TLLHTNMA
JCSNTNMA	MRBOTNMA	UNCYTNMA
JFCYTNMA	MRTWTNMA	WHBLTNMT
JLLCTNMA	MSCTTNMT	WHHSTNMA
KNVLTNBE	NSVLTNAP	WHPITNMA
KNVLTNFC	NSVLTNBW	
KNVLTNMA	NSVLTNCH	

VIRGINIA
VERIZON S VA (Contel) SAC 190233

AMHRVAXA	GLDSVAXA	NKVLVAXA
APMTVAXA	GRBRVAXA	OCQNVAXA
BRWRVAXA	GRBRVAXB	PMPLVAXA
CALLVAXA	GRTSVAXA	QNTCVAXA
CHNCVAXA	HRBRVAXA	RPHNVAXA
DLCYVAXA	HYMRVAXA	SMFDVAXA
DLLSVAXA	KZTWVAXA	STCKVAXA
DYTNVAXA	LRTNVAXA	STFRVAXZ
EDOMVAXA	MGVLVAXA	WNSDVAXA
EKTNVAXA	MNSSVAXA	WYCVVAXA

VIRGINIA
VERIZON VA, INC. (SAC 195040)

ALSNVAAD	CNCRVACN	LOUSVALU
ALSNVAAX	CNVIVACT	LRTNVAGU
ALSNVABA	CRBGVACB	LSBGVALB
ALSNVABR	CRVIVACV	LVTNVALN
ALSNVACN	CRVLVACV	LVVLVALV
ALSNVAFR	DAVLVADA	LYBGVACH
ALSNVAMV	DAVLVAFP	LYBGVACV
ARTNVAAR	DBLNVADU	LYBGVAMH
ARTNVACK	DCVLVADV	LYBGVANL
ARTNVACY	FIFEVAFI	LYBGVAOF
ARTNVAFC	FLCHVAMF	LYBGVATM
ASBNVAAS	FRBGVAFB	LYBGVAYB
ASKDVAAS	FRBGVALH	MCLNVAVL
BCHNVABH	FRFXVABF	MDBGVAMI
BDRFRVABD	FRFXAFF	MNKNVAMN
BELVLVABV	GNBOVAGA	MNRLVAML
BGISVABI	GNWDVAGW	MRSHVAMA
BLMTVABM	GOVLVAGV	NLFRVANF
BOYCVABY	GVTNVAGR	NRFLVABL
BTHIVABT	HLBOVAHB	NRFLVABS
CCVLVACH	HMPNVAAB	NRFLVAGS
CGVLVACL	HMPNVADC	NRFLVASP
CHESVACR	HMPNVAQN	NRFLVAWC
CHHMVACH	HPWLVAHW	NRTNVANO
CHSKVACD	HRNDVADU	NRWSVANA
CHSKFAGU	HRNDVAHE	NWNWVAHV
CLPPVACU	HRNDVAST	NWNWVAJF
CLPPVAGR	JNVLVAJV	NWNWVAYK
CLVRVACL	LBNNVALB	ORNGVAOR
CMLDVACU	LBNNVARD	PCVLVAPV

**VIRGINIA
VERIZON VA, INC. (SAC 195040)**

continued

PLSKVAPU	RNGLVARG	STTNVAST
PNGPVAPG	RONKVABK	STTNVAVE
PNRVVAPR	RONKVABS	SWVLVASV
PRBGVAPB	RONKVACS	THPLVATP
PTBGVAPB	RONKVACV	UNVLVAUV
PTMOVAHS	RONKVAGC	UPVLVAUP
RCMDVACG	RONKVALK	VINNVAVN
RCMDVAGK	RSTNVAFM	VRBHVACC
RCMDVAGR	RSTNVALF	VRBHVAGN
RCMDVAGY	SALMVAFL	VRBHVAIL
RCMDVAHL	SALMVAMC	VRBHVAIR
RCMDVAHR	SALMVASA	VRBHVAPT
RCMDVAHS	SFFLVASK	VRBHVARC
RCMDVAIT	SHVLVASW	VRBHVAVB
RCMDVALS	SNMTVASM	WISEVAWI
RCMDVAPE	SNTNVASS	WLBGVAWM
RCMDVAPS	SPFDVASP	WNCHVANM
RCMDVARA	SPTSVASP	WNCHVAWC
RCMDVASN	SRVLVASP	WNTRVAWG
RCMDVASR	STCYVASC	WRTNVAWR
RDFRVARA	STRDVASD	WTFRVAWT

Appendix C**Rural Telephone Study Areas for Inclusion in Nextel's ETC Service Area****ALABAMA**

Butler Telephone Co., Inc. (now TDS)
Castleberry Telephone Co., Inc.
Frontier Communications of Alabama
Frontier Communications of the South
Graceba Total Communications, GTC Inc. – AL, Gulf Telephone Company
Hayneville Telephone Co., Inc.
Millry Telephone Company
Mon-Cre Telephone Cooperative
Pine Belt Telephone Company
Union Springs Telephone Co., Inc.

FLORIDA

GTC, Inc. – FL
Frontier Communications – South
AllTel Florida, Inc.
Quincey Telephone Co.

GEORGIA

Quincy Tel Co-GA Div
Bulloch County Rural
Citizens Tel Co.-GA
Glenwood Tel Co
Comsouth Telecomm
Interstate Tel. Co.
Pembroke Tel Co
Pineland Tel Coop
Planters Rural Coop
Plant Tel Co
Progressive Rural
Public Service Tel
Frontier of GA
Waverly Hall LLC
Accucom Telecom

NEW YORK

Armstrong Tel Co-NY
Frontier-Ausable Val
Berkshire Tel Corp
Cassadage Tel Corp
Champlain Tel Co
Chautauqua & Erie
Chazy & Westport
Citizens Hammond NY
Taconic Tel Corp
Crown Point Tel
Corp
Delhi Tel Co

(New York – continued)

Deposit Tel Co
Dunkirk & Fredonia
Edwards Tel Co
Germantown Tel Co
Hancock Tel Co
Margaretville Tel Co
Middleburgh Tel Co
Alltel NY-Fulton
Newport Tel Co
Ogden Tel Co
Oneida County Rural
Ontario Tel Co, Inc.
AllTel NY-Red Jacket
Oriskany Falls Tel
Pattersonville Tel
Port Byron Tel Co
Frontier – Rochester
Frontier – Seneca Gorh
State Tel Co
Frontier – Sylvan Lake
Township Tel Co
Trumansburg Tel Co
Vernon Tel Co
Warwick Valley-NY
Citizens Telecom-NY
Citizens-Red Hook
Citizens-West. Cnty
Verizon New York

PENNSYLVANIA

Bentleyville Communications Company
Frontier Communications of Breezewood
Buffalo Valley Telephone Company
Frontier Communications of Canton
Commonwealth Telephone Company
Conestoga Telephone & Telegraph Company
Denver and Ephrata Telephone & Telegraph Company
Ironton Telephone Company
Lackawaxen Telecommunications Services, Inc.
Laurel Highland Telephone Company
Mahanoy and Mahantongo Telephone Company
Marianna-Scenery Telephone Company
North Eastern PN Telephone Company
North Penn Telephone Company
Armstrong Telephone Company – North
Palmerton Telephone Company
Pennsylvania Telephone Company
Pymatuning Independent Telephone Company
South Canaan Telephone Company
Sugar Valley Telephone Company
Venus Telephone Company
West Side Telecommunications

TENNESSEE

United Inter-MT-TN

VIRGINIA

Amelia Tel Corp

Citizens Tel Coop

Ntelos, Inc.

North River Tel Coop

Pembroke Tel Coop

Peoples Mutual Tel

Roanoke & Botetourt

Shenandoah Tel Co

Virginia Tel Co

Verizon South VA

New Castle Tel Co.