

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

WILLIAM EUGENE KASTE,)
)
 COMPLAINANT,)
)
 v.)
)
 NPCR, INC. D/B/A NEXTEL)
 PARTNERSHIP,)
)
 DEFENDANT.)
)

RECEIVED
NOV 14 2005
PUBLIC SERVICE
COMMISSION

CASE NO. 2005-00411

ANSWER

The above-named defendant, NPCR, Inc. d/b/a Nextel Partnership (“NPCR”), for its answer to the complaint filed by William Eugene Kaste (“Mr. Kaste”) respectfully states:

1. NPCR denies the averment in paragraph “c” of Mr. Kaste’s Complaint that he did not verbally agree to extend his contract with defendant. NPCR admits that pursuant to the terms of the contract, Mr. Kaste paid \$200.00 to NPCR for early termination of his contract. Any and all other averments in paragraph c of the complaint are denied to the extent not expressly admitted herein.

FIRST DEFENSE

2. On March 17, 2004, Mr. Kaste entered into a one-year service term with NPCR for wireless services and equipment, accepting the Terms and Conditions of the signed Subscriber Agreement. (A copy of Mr. Kaste’s Subscriber Agreement, which includes his “Subscriber Agreement: Customer Order,” “Terms and Conditions,” and “New Customer Checklist,” is attached to this answer.) As set out in Section 2 of the Terms and Conditions of

that agreement, and as noted on the New Customer Checklist, “a \$200 cancellation fee per unit will be charged to Customer for cancellation within the Service Term, if a one- or two-year Service Term is selected on the Subscriber Agreement.”

3. On January 10, 2005, Mr. Kaste called to cancel phone number 859-621-6981; however, he accepted a specialized price plan offer in exchange for agreeing to renew his service term for one year. Thus, his service continued under the terms and conditions of his March 17, 2004 Subscriber Agreement.

4. On August 8, 2005, Mr. Kaste ported his phone number to an alternate carrier and was assessed a \$200 early termination fee, as permitted and required by his Subscriber Agreement.

5. Accordingly, the \$200 fee was properly assessed to and paid by Mr. Kaste.

SECOND DEFENSE

6. Mr. Kaste is barred from asserting his complaint against NPCR under the doctrine of accord and satisfaction, as Mr. Kaste has already paid NPCR the \$200.00 in question in satisfaction of his obligations upon his early termination of his contract with NPCR.

THIRD DEFENSE

7. The proper defendant to this claim is NPCR, Inc., not NPCR, Inc, d/b/a/ Nextel Partnership.

FOURTH DEFENSE

8. Mr. Kaste’s allegations fail to state a claim upon which relief can be granted, and are barred or limited by the doctrines of waiver, estoppel, and payment.

WHEREFORE, NPCR prays that the complaint be dismissed and for all other appropriate relief in law and equity to which it is entitled.

Respectfully submitted,




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Stephen M. Gracey (90215)
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Nextel Partnership*

CERTIFICATE OF SERVICE

NPCR, Inc. d/b/a Nextel Partnership states that it has served a copy of the foregoing by United States First Class Mail this 14th day of November, 2005 upon the following:

William Eugene Kaste
206 South Hill Road
Versailles, Kentucky 40383



Counsel for NPCR



Subscriber Agreement: Customer Order

I authorize Nextel to run my credit report: WJK (initial) Date 3-17-04 Credit App. # 87866351 Score B Deposit Amount/Unit: \$ 0 Account No. 14,4,8,8,2,8,0,8,6

Account No. <u>448828086</u>	Order No. <u>DM13-0-87479</u>	<input checked="" type="checkbox"/> New <input type="checkbox"/> Existing <input type="checkbox"/> Upgrade
Account Name <u>William Kaste</u> Phone <u>(859) 879-1698</u>	<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Major <input type="checkbox"/> Corporate	<input type="checkbox"/> Strategic <input type="checkbox"/> Government
Address <u>206 South Hill Road</u>	SSN/Tax ID <u>517-66-8813</u>	<input type="checkbox"/> Tax Exempt (attach certificate)
City <u>Versailles</u> State <u>KY</u> Zip <u>40383</u>	ID #1 <u>K99-282-354</u>	State <u>KY</u> Exp. Date <u>11-20-07</u>
Email (Optional)	ID #2	State Exp. Date
Shipping Address:	ID #3 (if required)	
<input type="checkbox"/> Same as above	Authorized Contact(s) <u>Same</u>	Phone ()

Qty.	Equipment	Equipment ID No.	Alias	Extended Price	Rate Plan or Service	Term # months	Services*							NPA/NXX or Phone No.	Monthly Total
							C	DC	NDC	NOL	DP	NG	P		
1	F90	000812221889800		\$ 99.99	National Train Show										\$ 39.99
1	I90	00080983595500		\$ 99.99	National Tennis - Ad										\$ 15.99
				\$	Call-7ID										\$ 2.99
				\$	Voice mail										\$ 2.99
				\$											\$
				\$											\$
				\$											\$
<input type="checkbox"/> Additional Order pages attached				Adjustment	\$	Certain fees and assessments such as a Federal Programs Cost Recovery fee, Telecommunications Relay Service, and State and Federal Universal Fund assessments apply and may vary. Such fees and assessments are not taxes. They pay for government programs directly and Nextel's cost for complying with government programs. Visit www.nextel.com or call Customer Care at 1-888-566-6111 for more information.							Adjustment	\$	
Services: C: Cellular DC: Direct Connect™				Credit Deposit (# Units)	\$	Nextel Service Plan (# Units)							\$		
NDC: Nationwide DC™ NOL: Nextel Online DP: Direct Protect				Account Set-Up Fee	\$	Other Charges (Taxes Excluded)							\$		
NG: Number Guard P: Wireless Local Number Portability™				Shipping Charge	\$	Federal Programs and Surcharges							\$ Varies		
** I authorize Nextel to port my designated phone numbers				Total One-Time Charge (Taxes Excluded)	\$	Estimated Total Monthly Recurring Charge (Taxes Excluded)							\$ 58.99		

REC'D APR 13 2004
ENTD APR 13 2004
BSN

Direct Protect If you subscribe to the Direct Protect program, you acknowledge that the equipment listed here is in your possession and in good working order, you have received, read, and understood the terms and conditions under which the insurance is offered as outlined in the insurance brochure. Customer acknowledges that the insurance protection is offered by The Signal, that Nextel acts only as a billing agent for The Signal and that any claims regarding the insurance or its administrator shall be directed to The Signal. All failure to affirmatively accept Direct Protect shall be deemed denial of coverage by customer. Activation of Direct Protect coverage after the initial sale and delivery of equipment may be subject to a 30 day delay in coverage effective date. Initial: Accept _____ Decline <u>WJK</u>	Nextel Service Plan (NSP) I agree to enroll my entire account on the Nextel Service Plan. I have read and understood the terms and conditions of the NSP program. I understand the program will remain in effect as long as my equipment is active on the Nextel system, or I provide written notice to Company at the address shown on my bill to discontinue my enrollment in NSP. Initial: Accept <u>WJK</u> Decline _____	Service Term If no box is checked, default is one-year term and cancellation fee applies. <input checked="" type="checkbox"/> 1-Year Term <input type="checkbox"/> 2-Year Term <input type="checkbox"/> No Term Initial: Accept <u>WJK</u>	Recurring Direct Debit Program I have requested to enroll in NEXTEL'S Recurring Direct Debit program. This agreement will authorize Nextel to initiate scheduled recurring electronic funds transfers from my credit card/checking account. This will begin on my next billing cycle. Charges will be deducted within 24 hours of the bill due date or at the time of activation and will be deducted each month thereafter on the bill due date. I have received and understood the terms and conditions of this program. Initial: Accept _____ Decline <u>WJK</u>	Wireless Number Portability Wireless telephone numbers (except Direct Connect numbers) can be moved to other carriers. A fee of \$25 per number applies. To make sure that you have accurate information about applicable fees and your final bill and to ensure that we validate your intent to change carriers, we will protect your telephone numbers with Wireless Number Portability Verification. Before moving your phone numbers to another wireless carrier, you will need to call us first. To remove Wireless Number Portability Verification call 1-888-566-6111. Initial: Accept <u>WJK</u>	Desired Date/Time Auth. Name Carrier Prev Acct No. Prev Acct Pswd/PIN Prev Billing Name Prev Address
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Point of Sale One-Time Charge: \$	Payment Type	No.	THIS AGREEMENT consists of the Customer Expectations Checklist, General Terms and Conditions, Plan Information, and this Customer Order. By signing below, the undersigned represents that: (1) he or she is at least 18 years of age and is legally competent to enter into this Agreement; (2) has received a true copy of the Agreement and has read and clearly understands the terms and conditions of the Agreement, including changes to terms or charges; limitations of liability and disclaimers of warranties as permitted by law; arbitration of disputes, early termination fees, and other important provisions; (3) if acting of behalf on an entity, he or she is fully authorized to legally bind the entity; and (4) if acting on behalf of a corporation, the execution of this Agreement has been authorized by all necessary corporate actions. The undersigned agrees to pay all charges if the entity or corporations listed under "Account Name" denies responsibility. The undersigned represents that all information provided herein is true and accurate.
Credit Card: <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> AmEx <input type="checkbox"/> Discover <input type="checkbox"/> Diners	Name on Card	Card/Bank No.	
Account No.		Expiration Date	
Equipment PO #	Service PO #		
For any deposit made by check, Customer expressly authorizes Company to electronically debit customer's account for the amount of the check. The use of check for payment of the deposit represents Customer's acceptance of this provision of this Agreement. For any deposit made by credit or debit card, Customer expressly authorizes Company to charge or debit customer's account provided above.			
I have verified that the signer of this document is the same person whose driver's license has been presented		Agent Code <u>RCBG9AGX</u>	Customer Signature <u>WJK</u>
Sales Assoc. Signature	Sales Assoc. Name (print) <u>Jeff Rood</u>	Customer Name (print) <u>William KASTE</u>	
Sales Manager / AR Name	Phone No. <u>(859) 276-0743</u>	Date <u>3-17-04</u>	
Comments			

NEXTEL

NEW CUSTOMER CHECKLIST

14488218086
CUSTOMER ACCOUNT NO.

Welcome New Nextel Customer!

This checklist ensures that your Nextel representative has fully explained important information about Nextel handsets and service and is being provided as an additional level of customer service and consumer protection. If you have any questions on any particular item, now is a great time to ask your Nextel representative for additional information or clarification.

THIS SECTION TO BE COMPLETED BY A NEXTEL REPRESENTATIVE ONLY

WILLIAM KASIE <small>CUSTOMER / COMPANY NAME</small>	_____ <small>CONTACT NAME</small>
03/17/04 <small>DATE OF ORDER</small>	_____ <small>EOE NUMBER</small>
_____ <small>REQUESTED TRAINING DATE</small>	_____ <small>REQUESTED TIME</small>
_____ <small>AM / PM</small>	_____ <small>REQUESTED TRAINING LOCATION</small>
_____ <small>DATE OF ORDER</small>	_____ <small>AGENT CODE</small>
_____ <small>REQUESTED TRAINING DATE</small>	_____ <small>REQUESTED TRAINING LOCATION</small>

THIS SECTION TO BE COMPLETED BY THE NEXTEL CUSTOMER ONLY

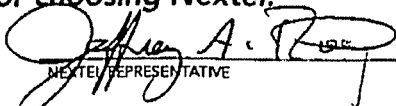
Please read the following and signify your understanding and acceptance by placing your initials in the box next to each statement.

	Customer Initials
I understand I can reach the Nextel Customer Care center by calling (888) 566-6111 or 611 from my Nextel phone.	WAK
I understand that the Motorola equipment warranty is good for one year after activation and does not cover equipment abuse, neglect or water damage. I have been advised of the Nextel policies concerning equipment repair.....	WAK
I have been offered Nextel Direct Protect Insurance for my handset(s) and accessories and have indicated my choice on the Subscriber Agreement. Replacement units not covered by insurance or warranty are available at regular retail prices.	WAK
I understand that the normal delivery time for Nextel equipment is 5 to 7 business days after my order is activated. Equipment delivery times may be longer for certain accessories and non-standard or complex activations.	N/A
I have been advised that my Nextel handsets and Nextel accessories will be shipped. If my handsets are being shipped COD, I will need to provide a money order or check upon delivery. Equipment is not available on a will-call basis.....	N/A
I understand that any payments made in person must be made at a company owned Nextel facility with a check or money order made payable to Nextel only. Payments cannot be made to a Nextel dealer or to Nextel field sales representatives....	N/A
I understand and acknowledge the current coverage area and level of service provided by Nextel.	WAK
I have been provided with a copy of my Nextel Subscriber Agreement and this New Customer Checklist. My Nextel representative has fully explained the terms of my service contract (if applicable), including any early termination penalties. ...	WAK
My rate plan has been fully explained to me and I understand the terms of any special rate plan promotions and their expiration dates: <u>3-17-05</u>	WAK
I understand that Group Call (applicable on private fleets only) is billed per phone (able to receive the call transmission) per minute to initiate and receive responses	WAK
My billing and service addresses are the same (If different please ensure that proper addresses are provided) <input checked="" type="radio"/> YES <input type="radio"/> NO	WAK
I am exempt from one or more of the federal, state and local taxes (If correct please identify which tax exemptions exist and provide tax exemption certificate) YES / <input checked="" type="radio"/> NO	WAK
I live in an unincorporated area YES / <input checked="" type="radio"/> NO	WAK
I agree that the following additional discounts, rebates and accessories are being provided by the Nextel dealer or representative directly to me and are not to be considered part of my business relationship with Nextel Partners, Inc. Please list all additional discounts, rebates and accessories being provided directly to the customer by the Nextel dealer or representative:	WAK
<input checked="" type="checkbox"/> 12 Month Promotional Agreement - In conjunction with the Nextel <u>National Team Show</u> offer, end date of <u>03/17/05</u> <input type="checkbox"/> 24 Month Promotional Agreement - In conjunction with the Nextel <u>National Team Show</u> offer, end date of <u>03/17/05</u> the customer is eligible to receive promotional service pricing. In the event of a Disconnection of service at any time during the twelve-month or twenty-four month period (as applicable to the offer) following service activation, the customer will be charged a \$200 cancellation fee for each disconnected Nextel phone.....	WAK

#609 Partners 2/03

Thank you very much for choosing Nextel!

NEXTEL CUSTOMER SIGNATURE DATE


NEXTEL REPRESENTATIVE 3/17/04
DATE