

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF NPCR, INC. D/B/A NEXTEL)	
PARTNERS FOR DESIGNATION AS AN)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER)	2003-00143
IN THE STATE OF KENTUCKY		

O R D E R

On April 23, 2003, NPCR, Inc. d/b/a Nextel Partners (“Nextel”) filed an Application for Designation as an Eligible Telecommunications Carrier (“ETC”) in certain rural and non-rural areas of Kentucky in which it provides service. The Commission granted intervention requests of the Independent Telephone Group¹ and TDS Telecom. Nextel specifically requested that it be granted ETC status in service areas of Leslie County Telephone,² Lewisport Telephone Company, Logan County Telephone Company, Mountain Rural Telephone Company, Peoples Rural Telephone Company, South Central Rural Telephone Company, certain wire centers of BellSouth Telecommunications, Inc., and Kentucky ALLTEL, Inc.

¹ The Independent Telephone Group consists of Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Coalfields Telephone Company; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative Corporation, Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Cooperative Corporation; Peoples Rural Telephone Cooperative Corporation, Inc.; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Incorporated; and West Kentucky Rural Telephone Cooperative Corporation, Inc.

² Nextel amended its petition to exclude Leslie County Telephone.

The Commission set up a procedural schedule in which data requests were exchanged, parties were allowed to submit comments, and parties were allowed to request a public hearing, which was requested and granted. The Commission held the public hearing on May 25, 2004, and the parties subsequently filed briefs and reply briefs. The matter is now ripe for Commission decision.

Discussion

Section 254(e) of the Telecommunications Act of 1996 (“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

Section 214(e)(2) of the Act provides state commissions with the primary responsibility for determining ETC designations. 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).⁵ Before

³ 47 U.S.C. § 254(e).

⁴ 47 U.S.C. § 214(e)(1).

⁵ 47 U.S.C. § 214(e)(6).

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.⁶

An ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to Section 254(c); (2) 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”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore using media of general distribution”; and (4) identification of its study area if the petitioner meets the definition of a “rural telephone company” pursuant to Section 3(37) of the Act, or, if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

The intervenors⁷ brought up a new argument in the post-hearing brief against allowing Nextel’s petition to be an ETC. The intervenors argue that Nextel is not properly registered as a corporation to do business in the state of Kentucky under KRS 365.015(2)(a) and has not filed the appropriate documents with the Secretary of State for an assumed name, “Nextel Partners.” Nextel asserts in its reply brief that it has filed the appropriate documents with the Secretary of State and that the name “Nextel Partners” is registered with NEXTEL WIP Lease Corp. NEXTEL WIP Lease

⁶ Id.

⁷ The intervenors that actively participated in this proceeding and that are referenced throughout this memo refer to Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., Peoples Rural Telephone Cooperative Corporation, Inc., South Central Rural Telephone Cooperative Corporation, Inc., and the Independent Telephone Group.

Corp. is under the same corporate ownership as NPCR, Inc. The Commission finds that the applicant is properly registered to do business in the state of Kentucky.

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. 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 Federal Communications Commission's ("FCC") rules. 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. Furthermore, Nextel has made commitments that closely track those set forth in the Virginia Cellular Order⁸ and Highland Cellular Order,⁹ including: (1) annual reporting of progress toward 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

⁸ 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).

⁹ 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).

outside existing network coverage; and (3) specific commitments to construct new cell sites in areas outside its network coverage.¹⁰

The intervenors argue that Nextel does not provide service throughout the rural area in which it seeks designation as an ETC. Signal propagation maps support, and Nextel admits, that it is unable to provide service at this time to all areas. The FCC has 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. Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.

The intervenors 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 were to offer the associated discounts. 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. Based on a review of the record, the Commission finds that Nextel has demonstrated that it now offers, or will offer, once designated, the services suggested by the federal universal service mechanism.

Offering the Supported Services Using a Carrier's Own Facilities

Nextel states that it intends to provide the supported services using its existing network infrastructure. Nextel currently provides the service using its facilities-based digital network infrastructure and licensed CMRS spectrum in Kentucky. The

¹⁰ Nextel has provided detailed information on how it will use universal service support to construct cell sites throughout the area in which it is designated as an ETC.

intervenors argue that Nextel may be unable to serve throughout the service areas of the rural carriers and that the assertions of the applicant have not been supported with either cost studies or capital plans to provide service.

Section 214(e)(4) explains that a secondary ETC may be required to “ensure that all customers ... continue to be served” should a primary ETC (i.e., incumbent LEC) “cease providing universal service in an area served by more than one eligible telecommunications carrier.” The implications are that ETC status has significant potential obligations if universal service to end-users ever becomes compromised.

The Commission finds that 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. The Commission will monitor the progress of Nextel’s build-out and ability to serve its customers through regulatory reports detailed later in this Order.

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 therefore by using media of general distribution. The intervenors, however, contend that Nextel does not direct its advertising directly at consumers in the rural areas and only focuses on major metropolitan areas. In its petition, 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 FCC’s rules. Nextel has provided lists of its advertising that show it does advertise throughout the state and the rural areas. The Commission finds that

Nextel has demonstrated that it will advertise the availability of suggested services and charges therefore.

Non-Rural Study Areas

The FCC 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.¹¹ The Commission believes that 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; that is, if 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.

Rural Study Areas

In considering whether designation of Nextel as an ETC in areas served by rural telephone companies will serve the public interest, the Commission must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, the Commission must 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

¹¹ See, 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).

competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

The Commission finds that 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. 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. 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. 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.¹²

¹² 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.

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.¹³ Nextel asserts that granting ETC designation to Nextel will provide rural consumers the benefits of competition through increased choices and further the deployment of new telecommunications services. It also asserts that granting the request will not harm consumers. The Commission finds that Nextel has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

Certification in Designated Service Areas

The Commission finds that Nextel should be certified to receive Universal Service Fund support for the current certification period as an ETC in the service areas served by non-rural telephone companies, as designated herein. The Commission also finds that Nextel should be certified to receive Universal Service Fund support for the current certification period as an ETC in the service areas served by rural telephone companies, as designated herein. Nextel's service area for each rural telephone company encompasses that company's entire study area.

Regulatory Oversight

Separately, 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

¹³ See Highland Cellular Order, 19 FCC Rcd. at 6431, ¶ 20; Virginia Cellular Order, 19 FCC Rcd. at 1574-75, ¶ 26.

requests for service from potential customers were unfulfilled for the past year. The Commission will require Nextel to file this information and make available to the Commission any other information as it relates to service. The information shall be filed in the record of Administrative Case No. 381¹⁴ by September 1 of each year.

IT IS THEREFORE ORDERED that:

1. Nextel shall be designated an ETC in the geographic areas requested and as listed in Appendix A, attached hereto and incorporated herein.
2. Nextel shall offer universal support services to consumers in its service area.
3. Nextel shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including services offered by another.
4. Nextel shall advertise the availability of and charges for these services using media of general distribution.
5. Nextel is hereby certified as complying with the FCC's criteria, in accordance with 47 U.S.C. § 254(e), and therefore eligible to receive Universal Service Fund support for the current certification period.
6. By September 1, 2005, and each September 1 thereafter, Nextel shall make its annual certification filing in Administrative Case No. 381 and shall submit additional records as described herein.

¹⁴ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.

7. A copy of this Order shall be served upon the Federal Communications Commission and the Universal Service Administration Company.

Done at Frankfort, Kentucky, this 16th day of December, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2003-00143 DATED December 16, 2004

Designated areas for which Nextel is granted ETC Designation

1. Rural Telephone Company Study Areas

- 260412 Lewisport Telephone Company
- 260413 Logan County Telephone Company
- 260414 Mountain Rural Telephone Company
- 260415 Peoples Rural Telephone Company
- 260418 South Central Rural Telephone Company

2. Non-Rural ILEC Wire Centers

- 265182 BellSouth – KY

BDFRKYMA	ENSRKYMA	LOUSKYES	MLBGKYMA	SDVLKYMA
BGDDKYMA	FKLNKYMA	LRBGKYMA	MLTNKYMA	SEBRKYMA
BLFDKYMA	FNVLYMA	LSVLKY26	MTEDEKYMA	SHVLKYMA
BRGNKYMA	FORDKYMA	LSVLKYAN	MTSTKYMA	SLPHKYMA
BRTWKYES	FRFTKYES	LSVLKYAP	MYVLKYMA	SLVSKYMA
BWLGKYMA	FRFTKYMA	UVLKYBE	NRVLKYMA	SNTNKYMA
BWLGKYRV	GHNTKYMA	LSVLKYBR	NWHNKYMA	SPFDKYMA
BYVLKYMA	GRTWKYMA	LSVLKYCW	OKGVKYES	SRGHKYMA
CHPLKYMA	HABTKYMA	LSVLKYFC	OWBOKYMA	SSVLKYMA
CLPTKYMA	HANSKYMA	LSVLKYHA	OWTNKYMA	STCHKYMA
CMBGKYMA	HBVLKYMA	LSVLKYJT	PARSKYMA	STFRKYMA
COTNKYMA	HDBGKYMA	LSVLKYOA	PDCHKYMA	STGRKYMA
CRBNKYMA	HNSNKYMA	LSVLKYSH	PIVLKYMA	STRGKYMA
CRBOKYMA	HPVLKYMA	LSVLKYSL	PKVLKYMA	TYVLKYMA
CRLSKYMA	HRBGKYES	LSVLKYSM	PLRGKYMA	UTICKYMA
CRTNKYMA	HRFRKYMA	LSVLKYTS	PNTHKYMA	WACOKYMA
CYDNKYMA	HRLNKYMA	LSVLKYVS	PNVLKYMA	WDDYKYMA
CYNTKYMA	HWVLKYMA	LSVLKYWE	PRTNKYES	WHVLKYMA
DAVLKYMA	JCSNKYMA	MACEKYMA	PRVLKYMA	WLBGKYMA
DIXNKYMA	JLLCTNMA	MCDNKYMA	PTRYKYMA	WLVLYMA
EDVLKYMA	JNCYKYMA	MDBOKYMA	RBRDKYMA	WNCHKYMA
EKTNKYMA	KKVLKYMA	MDVIKYMA	RCMDKYMA	WNCHKYPV
EMNKNYES	LBJTKYMA	MGFDKYMA	RLVLKYMA	WSBGKYMA
EMNKNYPL	LGRNKYES	MGTWKYMA	RSTRKYES	WSPNKYMA

269690 Kentucky ALLTEL, Inc.

AGSTKYXA	CTBGKYXA	HZRDKYXA	LXTNKYXG	SHBGKYXA
ALBYKYXA	CYVLKYXA	IRVNKYXA	MDWYKYXA	SHDNKYXA
ASLDKYXA	EBNKKYXA	LBNNKYXA	MEDSKYXA	SLLCKYXA
BBVLKYXA	EBRNKYAC	LBRTKYXA	MNCHKYXA	SMGVKYXA
BEREKYXA	EZTWKYXA	LNCISKYXA	MNTIKYXA	SMRTKYXA
BESPKYXA	FBSHKYXA	LONDKYXA	MRHDKYXA	SOVLKYXA
BRHDKYXA	FLLCKYXA	LRTTKYXA	MTOLKYXA	SSHRKYXA
BRSDKYXA	FMBGKYXA	LTFDKYXA	MTVRKYAI	VNRGKYXA
BSVLKYXA	GISGKYXA	LVTNKYXA	MYLCKYXA	VRSLKYXA
BTVLKYXA	GNBGKYXB	LXTNKYUK	NANCKYXA	WHLLKYXA
BWVLKYXA	GNUPKYXA	LXTNKYXA	NCVLKYXA	WLMRKYXA
CECLKYXA	GRSNKYXA	LXTNKYXB	OLHLKYXA	AGSTKYXA
CKSNKYXA	GYSNKYXA	LXTNKYXC	OWVLKYXA	
CLCTKYXA	HGVLKYXA	LXTNKYXD	PNLCKYXE	
CLMAKYXA	HLBOKYXA	LXTNKYXE	RSSLKYXB	
CMVLKYXA	HTVLKYXE	LXTNKYXF	SCHLKYXA	