

STATE OF FLORIDA

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CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

February 25, 2003

Mr. Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington D.C. 20007

Re: Request for Advisory Letter Concerning Jurisdiction for Competitive Eligible Telecommunications Carrier Status, PSC Docket No. 030144-TP

Dear Mr. Jarvis:

This is in response to your letter dated February 7, 2003, requesting a written statement from the Florida Public Service Commission that Nextel Partners is not subject to the jurisdiction of the State of Florida for purposes of determining eligibility for Competitive Eligible Telecommunications Carrier status pursuant to federal law. As we discussed by telephone, the procedure for obtaining such a statement by the Commission is to file a petition for declaratory statement pursuant to section 120.565, Florida Statutes, and Rule Chapter 28-105, Florida Administrative Code, of the uniform rules of procedure, including the information required by the rules. I have enclosed a copy of these provisions for your ease of reference.

Please do not hesitate to call me at (850) 413-6098 if you have any questions.

Sincerely yours,

Christiana T. Moore
Associate General Counsel

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Enclosure
c: Division of Commission Clerk &
Administrative Services

DOCUMENT NUMBER - DATE
01949 FEB 25 03
FPSC-COMMISSION CLERK

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299; s. 760, ch. 95-147; s. 17, ch. 96-159.

CHAPTER 28-105 DECLARATORY STATEMENTS

28-105.001 Purpose and Use of Declaratory Statement.

28-105.002 The Petition.

28-105.003 Agency Disposition.

28-105.001 Purpose and Use of Declaratory Statement.

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

Specific Authority 120.54(5) FS. Law Implemented 120.565 FS. History—New 4-1-97.

28-105.002 The Petition.

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

- (1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency)
- (2) The name, address, telephone number, and any facsimile number of the petitioner.
- (3) The name, address, telephone number, and any facsimile number of the attorney or qualified representative (if any) of the petitioner.
- (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.
- (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.
- (6) The signature of the petitioner or of petitioner's attorney of qualified representative.
- (7) The date.

Specific Authority 120.54(5) FS. Law Implemented 120.565 FS. History—New 4-1-97, Amended 3-18-98.

28-105.003 Agency Disposition.

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. If a hearing is held, it shall be conducted in accordance with Sections 120.569 and 120.57(2), F.S. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Specific Authority 120.54(5) FS. Law Implemented 120.565 FS. History—New 4-1-97.