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(850) 413-6199

Public Service Commission

April 21, 2003

Mr. Carroll Webb  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, Florida 32399-1300

Re: PSC Docket No. 030346-TP - Petition for a Declaratory Statement That NPCR, Inc. d/b/a Nextel Partners, Commercial Mobile Radio Service Provider in Florida, Is Not Subject to Jurisdiction of Florida Public Service Commission for Purposes of Designation as "Eligible Telecommunications Carrier"

Dear Mr. Webb:

The Commission has received a Petition for Declaratory Statement from NPCR, Inc. d/b/a Nextel Partners on April 16, 2003. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Weekly on May 2, 2003.

Sincerely,

*Christiana T. Moore*

Christiana T. Moore  
Senior Attorney

cc: Division of the Commission Clerk  
and Administrative Services  
Enclosure

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Before the  
FLORIDA PUBLIC SERVICE COMMISSION  
Tallahassee, FL 32399

COPY

In the Matter of )  
)  
NPCR, INC. d/b/a NEXTEL PARTNERS' )  
)  
Petition for Declaratory Statement Concerning )  
the Commission's Jurisdiction to Determine )  
Nextel Partners' Entitlement to Eligible )  
Telecommunications Carrier Status in Certain )  
Designated Areas in the State of Florida )

Docket No. 030346-TP

Filed April 16, 2003

**NPCR, INC. d/b/a NEXTEL PARTNERS'**  
**PETITION FOR DECLARATORY STATEMENT**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by and through its undersigned counsel and pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, hereby files this Petition for Declaratory Statement, which seeks a determination from the Commission that Nextel Partners is not subject to the jurisdiction of the Florida Public Service Commission for the purpose of Nextel Partners' designation as an "Eligible Telecommunications Carrier" as that term is defined in Section 214(e)(1) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214(e)(1). In support of its Petition, Nextel Partners states as follows:

1. The name, address, telephone number and facsimile number of the Petitioner is:

NPCR, Inc. d/b/a Nextel Partners  
Attention: Brent Eilefson, Esquire  
Corporate Counsel  
10120 West 76<sup>th</sup> Street  
Eden Prairie, MN 55344  
952-238-2572 voice  
952-238-7372 facsimile

2. The name, address, telephone number and facsimile number of Nextel Partners' legal counsel in this docket is:

DOCUMENT NUMBER-DATE  
03511 APR 16 8  
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Ronald J. Jarvis  
Catalano & Plache, PLLC  
3221 M Street NW  
Washington, D.C. 20007  
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**BACKGROUND**

3. Nextel Partners seeks a declaratory statement regarding the jurisdiction of the Commission to make a determination concerning Nextel Partners' status as an "Eligible Telecommunications Carrier" ("ETC") pursuant to Section 214(e)(1) of the Act.

4. Nextel Partners is a Commercial Mobile Radio Service ("CMRS") operator offering only wireless voice and data services to individuals, companies, and governmental entities in the State of Florida and in other jurisdictions across the United States.

5. Since Nextel Partners offers qualified services in the study areas of rural telephone companies in Florida and in other jurisdictions, Nextel Partners is entitled under Sections 214 and 254 of the Act to apply for status as an "ETC," allowing it to obtain High Cost support and potentially other types of support from the Universal Service Fund.

6. The Act charges state commissions with making determinations concerning ETC status. *See* Section 214(e)(2) of the Act, 47 U.S.C. § 214(e)(2). But in cases where a state does not exercise jurisdiction over a carrier for this purpose, the Act allows a carrier to apply directly to the FCC for a determination. *See* Section 214(e)(6), 47 U.S.C. § 214(e)(6).

7. An essential part of this application to the FCC for ETC status determination is a showing that the carrier is "not subject to the jurisdiction of a state commission." For this purpose, Nextel Partners hereby seeks such a determination from the Florida Public Service Commission.

## ARGUMENT

7. The State of Florida, and more particularly, this Commission, does not regulate wireless carriers or CMRS carriers such as Nextel Partners. In fact, the definition of "Telecommunications Company" in the Florida Statutes specifically excepts CMRS carriers such as Nextel Partners. Section 364.02(12) of the Florida Statutes states, in pertinent part:

"Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" *does not include* an entity which provides a telecommunications facility exclusively to a certificated telecommunications company, a commercial mobile radio service provider, a facsimile transmission service, a private computer data network company not offering service to the public for hire, or a cable television company providing cable service as defined in 47 U.S.C. s. 522.

Florida Statutes § 364.02(12) (emphasis supplied).

In addition, the Commission's own rules in Chapter 25-4 do not regulate CMRS carriers such as Nextel Partners, but are limited to such entities as "Local Exchange Telecommunications Companies" (which in turn are defined as "telecommunications companies" for purposes of the Florida Statutes, thereby specifically excluding CMRS carriers, as shown above – see FPSC Rules at 25-4.003 (30)).

Although Florida's Statutes specifically state that CMRS carriers "shall continue to be liable for any taxes imposed pursuant to chapters 203 and 212 and any fees assessed pursuant to s. 364.025.[Universal Service]," (see Florida Statutes § 364.02(12)), there is no provision in Florida law for exercising regulatory jurisdiction over CMRS carriers.

In particular, although Florida law does allow for "Alternative Local Exchange Telecommunications Companies" ("ALECs") to apply to the Commission for ETC status, see

Florida Statutes § 364.025,<sup>1</sup> an ALEC is a form of a “telecommunications company” and therefore cannot be a CMRS carrier. So, although Florida law makes provision for other types of telephone companies to seek certification from the Commission for ETC status, this pathway is denied to CMRS companies, because they are not regulated as “telecommunications companies” under state law.

Consistent with this overall approach, the Commission in a recent case<sup>2</sup> acknowledged that CMRS providers (such as Nextel Partners) are “not regulated by this Commission” in accordance with Section 364.02(12)(c) of the Florida Statutes, and that CMRS carriers are “not subject to Commission rules.” Although this Commission decision clearly states

WHEREFORE, for the foregoing reasons, Nextel Partners requests the Commission to issue a declaratory statement determining that Nextel Partners is not subject to the jurisdiction of the Commission for the purpose of determining entitlement to Eligible Telecommunications Carrier status under Section 214(e) of the Communications Act of 1934, as amended.

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<sup>1</sup> Section 364.025 of the Florida Statutes provides as follows:

After January 1, 2000, an alternative local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that alternative local exchange telecommunications company. Upon petition of an alternative local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the alternative local exchange company. The commission may establish the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the alternative local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations and shall set up any mechanism needed to aid such company in carrying out these duties.

<sup>2</sup> *Application for certificate to provide pay telephone service by Radio Communications Corporation, and request for waiver of Rule 25-24.515(6), (10), and (14), F.A.C., Docket No. 991821-TC; Order No. PSC-00-1243-PAA-TC, 2000 Fla. PUC LEXIS 801 (July 10, 2000).*

Respectfully submitted,

NCPR, INC. d/b/a NEXTEL PARTNERS

By



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Date: April 16, 2003