ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	
Federal-State Joint Board on Universal Service	Docket No. 96-45
NPCR, INC. d/b/a NEXTEL PARTNERS	File No. _____
Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida	

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COMMISSION
CLERK

PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF FLORIDA

NPCR, INC. d/b/a NEXTEL PARTNERS

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Washington, DC 20007
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Counsel for Nextel Partners

AUS ____
CAF ____
CMP ____
COM ____
CTR ____
ECR ____
GCL ____
OPC ____
MMS ____
SEC 1
OTH ____

Date: September 16, 2003

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

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ATTACHMENTS

1. List of Designated Areas served by Nextel Partners in the State of Florida
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4. Declaration of Donald J. Manning, Esq.
5. High Cost, Interstate Access and Interstate Common Line Support Annual Certifications

SUMMARY

Nextel Partners is seeking designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act") in certain Designated Areas in the State of Florida, including both study areas of rural telephone companies and non-rural ILEC wire centers covered in their entireties.

Designation of Nextel Partners as an Eligible Telecommunications Carrier is appropriate, since Nextel Partners meets all of the criteria set forth in Section 214 of the Act, and in Part 54 of the Commission's Rules. In addition, designation of Nextel Partners as an ETC in the indicated rural telephone company study areas is strongly supported by the public interest in light of the innovative services and consumer choice that Nextel Partners' presence can bring to bear in those areas.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	File No. _____
	)	
NPCR, INC. d/b/a NEXTEL PARTNERS	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
in the State of Florida	)	
	)	

PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF FLORIDA

NPCR, Inc. d/b/a Nextel Partners, a wholly-owned indirect subsidiary of Nextel Partners, Inc., a publicly-traded company ("Nextel Partners"), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), hereby submits this Petition for Designation ("Petition") as an eligible telecommunications carrier ("ETC") in the State of Florida. Nextel Partners provides wireless telecommunications services throughout certain designated areas (the "Designated Areas") of the State of Florida.[1] Nextel Partners seeks designation as an ETC for both study areas of rural telephone companies ("RTCs") as defined in Section 153(37) of the Act, as well as wire centers of non-rural incumbent LECs.[2] As demonstrated herein, and certified in **Attachment 1** to this Petition, Nextel Partners meets all of the requirements for designation as an ETC in each of these Designated Areas and respectfully

[1] The Commission's ULS database contains a record of the many 800 MHz Economic Area ("EA") and site-based licenses pursuant to which Nextel Partners offers its services in Florida. The licenses are held by wholly-owned subsidiaries of Nextel Partners Operating Corp., which also owns 100% of Petitioner NPCR, Inc.

[2] A list of the rural telephone company study areas and non-rural incumbent LEC wire centers for which Nextel Partners seeks designation in this Petition (also referred to herein as the "Designated Areas") is set forth as **Attachment 1** hereto.

requests that the Federal Communications Commission (the "Commission") promptly grant this Petition. Nextel Partners does not seek redefinition of any of the RTC study areas in which it seeks ETC designation.

I. Nextel Partners Meets All the Requirements for Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Florida

Under Section 214(e)(6) of the Act, 47 U.S.C. § 214(e)(6), the Commission, consistent with the public interest, convenience and necessity, may, with respect to an area served by an RTC, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(1) of the Act. As demonstrated below, and as set forth in the declaration of Donald Manning, **Attachment 4** hereto, Nextel Partners meets each of these requirements.

A. Nextel Partners Will Provide Service Throughout the Designated Areas Over its Own Facilities

Nextel Partners will utilize its proprietary wireless network infrastructure and capacity to provide supported services throughout the Designated Areas in the State of Florida over its own facilities.

B. Nextel Partners Offers All Required Services and Functionalities

Nextel Partners offers, or will offer upon designation as an ETC in the Designated Areas, all of the services and functionalities required by Section 54.101(a) of the Commission's Rules, 47 C.F.R. § 54.101(a), including the following:

1. **Voice grade access to the public switched telephone network**. Voice grade access to the public switched telephone network ("PSTN") means the ability to make and receive traditional voice phone calls, within a bandwidth of approximately 3500 Hertz.[3] Nextel

[3] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 at 8810-11 ("*USF Order*").

Partners' voice grade access enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. The bandwidth for Nextel Partners' voice grade access is, at a minimum, 300 to 3,000 Hertz.

2. **Local Usage**. As part of the voice grade access to the PSTN, an ETC must provide local calling. Nextel Partners, through its wireless network, provides subscribers the ability to send and receive local phone calls both over Nextel Partners' network and through interconnection with the incumbent local exchange carriers serving the Designated Areas. Local usage is included in all of Nextel Partners' calling plans. As a designated ETC, Nextel Partners will comply with any and all minimum local usage requirements required by applicable law.

3. **Dual tone multi-frequency ("DTMF") signaling or its functional equivalent**. DTMF signaling allows carriers to provide expeditious call setup, and enables modem usage.[4] Nextel Partners uses out-of-band signaling and in-band multifrequency signaling that is functionally equivalent to DTMF.

4. **Single-party service or its functional equivalent**. Nextel Partners provides customers with single-party access for the duration of every phone call. Nextel Partners does not provide "multi-party" or "party line" services.

5. **Access to 911 and E911 emergency service**. The FCC has declared that access to emergency services is essential.[5] Nextel Partners provides universal access to the 911 system for its customers, and has implemented and will continue to implement E911 services consistent with the FCC's Rules and Orders and local PSAP requests. To date, Nextel Partners has received valid requests for Phase I or Phase II service from 15 PSAPs in Florida. Nextel

[4] *USF Order* at 8814.

[5] *Id.* at 8815.

Partners has worked cooperatively with the individual PSAPs, and has implemented all 15 of the PSAP requests. 13 PSAPs are receiving Phase I service while 2 PSAPs are implemented for Phase II. Nextel Partners is also working on 4 pending requests to upgrade from Phase I to Phase II service. Nextel Partners continues to receive new requests for E911 service and is implementing the requests within the FCC timetables.

6. **Access to operator services**. Nextel Partners offers all of its customers access to operator services, in accordance with the Commission's requirements.

7. **Access to interexchange service**. Nextel Partners customers can use the Nextel Partners network for interexchange access to place long distance phone calls. Access is through interconnection agreements with several interexchange carriers ("IXCs"). Nextel Partners' customers can also reach their IXC of choice by dialing the appropriate access code.

8. **Access to directory assistance**. All Nextel Partners customers receive access to 411 directory assistance service through the Nextel Partners network.

9. **Toll limitation for qualified low-income customers**. As required by the Commission's Rules, Nextel Partners, upon designation as an ETC, will make available to qualifying low-income customers a solution that assists these low-income persons to control their telephone costs.[6] Nextel Partners is fully capable of providing such a toll limiting service to its customers. Nextel Partners does not presently offer a toll limitation feature in Florida, because it is not an ETC. Upon designation as an ETC, Nextel Partners will participate in, and offer, LifeLine and Link-Up programs as required by applicable law. In accordance with Section 54.401(b) of the Commission's Rules, 47 C.F.R. § 54.401(b), Nextel Partners will not disconnect Lifeline service for non-payment of toll charges.

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[6] *USF Order* at 8821-22.

C. The Florida Public Service Commission Does Not Regulate CMRS Service

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the Florida Public Service Commission (the "FPSC") has determined that it does not regulate CMRS carriers such as Nextel Partners for the purpose of making ETC determinations. On August 19, 2003, the FPSC adopted an order declining to exercise jurisdiction over Nextel Partners for purposes of ETC designation in its Agenda Meeting of August 19, 2003. *See Petition for Declaratory Statement That NPCR, Inc. d/b/a Nextel Partners, a Commercial Mobile Radio Service Provider in Florida, is Not Subject to the Jurisdiction of the Florida Public Service Commission for Purposes of Designation As an Eligible Telecommunications Carrier*, Docket No. 030346-TP (Declaratory Statement adopted August 19, 2003).[7] The FPSC's order meets the Commission's specific requirements, in that it determines that Nextel Partners is not subject to regulation in the State of Florida for purposes of determinations concerning eligibility for ETC status. Nextel Partners accordingly requests that the Commission find that Nextel Partners is "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission" pursuant to 47 U.S.C. § 214(e)(6).

D. Nextel Partners Will Advertise the Availability of Supported Services

Nextel Partners will advertise the availability of the above-described services and the charges therefor using media of general distribution, in accordance with the requirements of Section 54.201(d)(2) of the Commission's Rules, 47 C.F.R. § 54.201(d)(2). Nextel Partners currently advertises the availability of its services, and will do so for each supported service on a

[7] The Commission's voting sheet ruling on Nextel Partners' declaratory statement petition is attached to this Petition as **Attachment 2**. Nextel Partners will supplement this Petition with a true and complete photocopy of the FPSC's complete written order as soon as it is made available to the public.

regular basis, in newspapers, and magazines, or on radio and television, that constitute media of general distribution in Designated Areas of the State of Florida.

II. Nextel Partners Requests Designation Throughout Each of the Designated Areas Within Its Service Coverage

Nextel Partners is not an RTC as defined in Section 153(37) of the Act, 47 U.S.C. § 153(37). Accordingly, Nextel Partners is required to describe the geographic area(s) within which it requests designation as an ETC. Nextel Partners requests designation as an ETC throughout each of the Designated Areas within the State of Florida, as set forth in **Attachment 1**. As noted above, these Designated Areas consist of study areas of RTCs that Nextel Partners serves and wire centers of non-rural incumbent LECs.[8] In **Attachment 3** hereto, Nextel Partners provides a map of its service area, within which Nextel Partners provides service to the Designated Areas listed in **Attachment 1** hereto.[9] Upon designation as an ETC, Nextel Partners will respond to a "reasonable request" for service from customers throughout each of the Designated Areas (consisting of RTC study areas and specified wire centers of non-rural ILECs) set forth on **Attachment 1**.

In the case of the non-rural ILEC wire centers served by Nextel Partners, as discussed immediately below, the Commission may designate Nextel Partners as an ETC without any redefinition of the service areas of the non-rural ILECs.

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[8] Wireless service is inherently affected by conditions unique to wireless service providers and which conditions do not affect wireline service providers. Geography, atmospheric conditions and man-made radiofrequency and physical structure interference may at times reduce or increase a wireless user's coverage area. At the same time, the mobility and functionality of wireless phone service adds immense benefits and convenience to wireless users that wireline providers cannot match.

[9] For purposes of this Petition, the coverage map provided in **Attachment 3** hereto reflects the result of a conservative radiofrequency propagation analysis assuming a three-watt wireless phone at –105 dBmW.

III. In Accordance with 47 U.S.C. § 214(e)(6), Nextel Partners Is Entitled to Be Designated as an ETC in Non-Rural Wire Centers

To the extent Nextel Partners is serving non-rural wire centers and providing the services set forth in Section I of the present Petition as required by Section 214(e) the Act and the Commission's implementing rules, as set forth in 47 C.F.R. Section 54.201(c), Nextel Partners is entitled to be granted ETC status by the Commission with respect to the non-rural wire centers attached hereto as **Attachment 1**. *See* 47 U.S.C. § 214(e)(6).

IV. Designation of Nextel Partners as an ETC for the Designated Areas Served by RTCs In the State of Florida Would Serve the Public Interest

Certain of the Designated Areas in which Nextel Partners seeks certification are areas served by RTCs as defined in Section 153(37) of the Act.[10] With respect to each of these areas served by an RTC, the Act requires that the Commission determine that Nextel Partners' designation as an ETC in each case is in the public interest.[11] As demonstrated below, Nextel Partners' designation as an ETC would serve the public interest in all of the Designated Areas in a number of ways.

The FCC has determined that "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."[12] This is particularly applicable in the Designated Areas served by RTCs within the State of Florida, many of which are rural, and in some cases remote, areas that may not presently be served by competitive wireline carriers that could provide a viable alternative to the incumbent LEC. Designation of Nextel Partners as an ETC will provide a

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[10] *See* **Attachment 1** hereto.

[11] *See* 47 U.S.C. § 214(e)(2).

[12] *See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 48, 55 (2000).

valuable alternative to the existing telecommunications regime in these areas, including a larger local calling area, the benefits of mobile telephony service and, where requested by the PSAP, GPS location assistance for customers calling 911.

In addition, designation of Nextel Partners as an ETC will provide an incentive to the incumbent LECs in all of the Designated Areas to improve their existing networks in order to remain competitive, resulting in improved services to consumers. Designation of Nextel Partners as an ETC in each case will also benefit consumers because support to services provided by Nextel Partners will help assure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Act.[13]

Designation of Nextel Partners as an ETC will also serve the public interest in all of the Designated Areas because Nextel Partners will provide all of the supported services required by applicable law, will participate in the LifeLine and Link-Up programs as required by the FCC's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Act are achieved. Allowing Nextel Partners access to universal service subsidies will allow Nextel Partners to continue to enhance and expand its network infrastructure to better serve consumers in underserved, high-cost areas of the State of Florida, and to compete with other carriers on a level regulatory playing field.

Finally, designation of Nextel Partners as an ETC will serve the public interest by further promoting the extensive role Nextel Partners plays in the provision of communications services to Florida public schools, libraries and local, state and federal government agencies, specifically law enforcement. At the time of this filing, Nextel Partners is the wireless service to 28 Florida

[13] *See* 47 U.S.C. § 254(b)(1).

colleges, universities, public schools and libraries, 23 divisions of Federal Government in Florida, 27 state level agencies and in excess of 89 local government agencies, including police, fire and similar first-responders.

Accordingly, designation of Nextel Partners as an ETC will serve the public interest.

V. Anti-Drug Abuse Certification

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.[14]

VI. High-Cost Loop, Interstate Access, and Interstate Common Line Support Certification

Under Sections 54.313, 54.314 and 54.904 of the Commission's Rules, as well as 47 C.F.R. § 54.809, carriers wishing to obtain universal service support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Act. As explained above, the GPSC does not exercise jurisdiction over CMRS carriers such as Nextel Partners for the purpose of ETC status designations. Therefore, Nextel Partners has submitted its high-cost loop interstate access and interstate common line support certification letters with the Commission and with USAC. Copies of these certifications are attached hereto as **Attachment 5**. Nextel Partners respectfully requests that the Commission issue a finding that Nextel Partners has met the high-cost, interstate access and interstate common lines support certification requirement and that

[14] *See* Declaration of Donald Manning, **Attachment 4** hereto.

that Nextel Partners is, therefore, entitled to begin receiving such support, where available, as of the date it receives a grant of ETC status in order that funding will not be delayed.[15]

VII. Conclusion

Because the requirements for eligibility for designation as an eligible telecommunications carrier have been met, Nextel Partners requests that the Commission promptly grant this Petition.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS

By 

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(202) 338-1700 (facsimile)

Counsel for Nextel Partners

Date: September 16, 2003

[15] *See Guam and Cellular Paging, Inc. Petition for Waiver of FCC Rule Section 54.314*, Docket No. 96-45 (filed February 6, 2002).

ATTACHMENT 1

Designated Areas for which Nextel Partners
seeks ETC designation in this Petition

1. Rural Telephone Company Study Areas

Study Area Code	Company Name
210291	GTC, Inc. – FL
210318	Frontier Communicatic .is – South
210336	AllTel Florida, Inc.
210338	Quincey Telephone Co.

2. Non-Rural ILEC Wire Centers

Study Area Code	Company Name
215191	**BellSouth Telecommunications, Inc.**

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

ATTACHMENT 2

Florida Public Service Commission Order
Declining Jurisdiction over Nextel Partners for ETC Designation

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

AUGUST 19, 2003

RE: Docket No. 030346-TP - Petition for 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."
Docket No. 030413-TP - Petition for declaratory statement that ALLTEL Communications, Inc., 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." (Deferred from July 15, 2003 conference.)

ISSUE 1: Should the Commission issue a declaratory statement?
RECOMMENDATION: Yes. The petitions satisfy the threshold requirements for a declaratory statement.

APPROVED

Commissioners Jaber and Baez dissented.

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

REMARKS/DISSENTING COMMENTS:

VOTE SHEET
AUGUST 19, 2003
Docket No. 030346-TP - Petition for 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."
Docket No. 030413-TP - Petition for declaratory statement that ALLTEL Communications, Inc., 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." (Deferred from July 15, 2003 conference.)

(Continued from previous page)

ISSUE 2: Should the Commission issue a declaratory statement that Nextel and ALLTEL are not subject to the jurisdiction of the Commission for purposes of determining eligibility for Eligible Telecommunications Carrier ("ETC") status pursuant to 47 U.S.C. § 214(e)?
PRIMARY RECOMMENDATION: Yes.

APPROVED

Commissioners Jaber and Baez dissented.

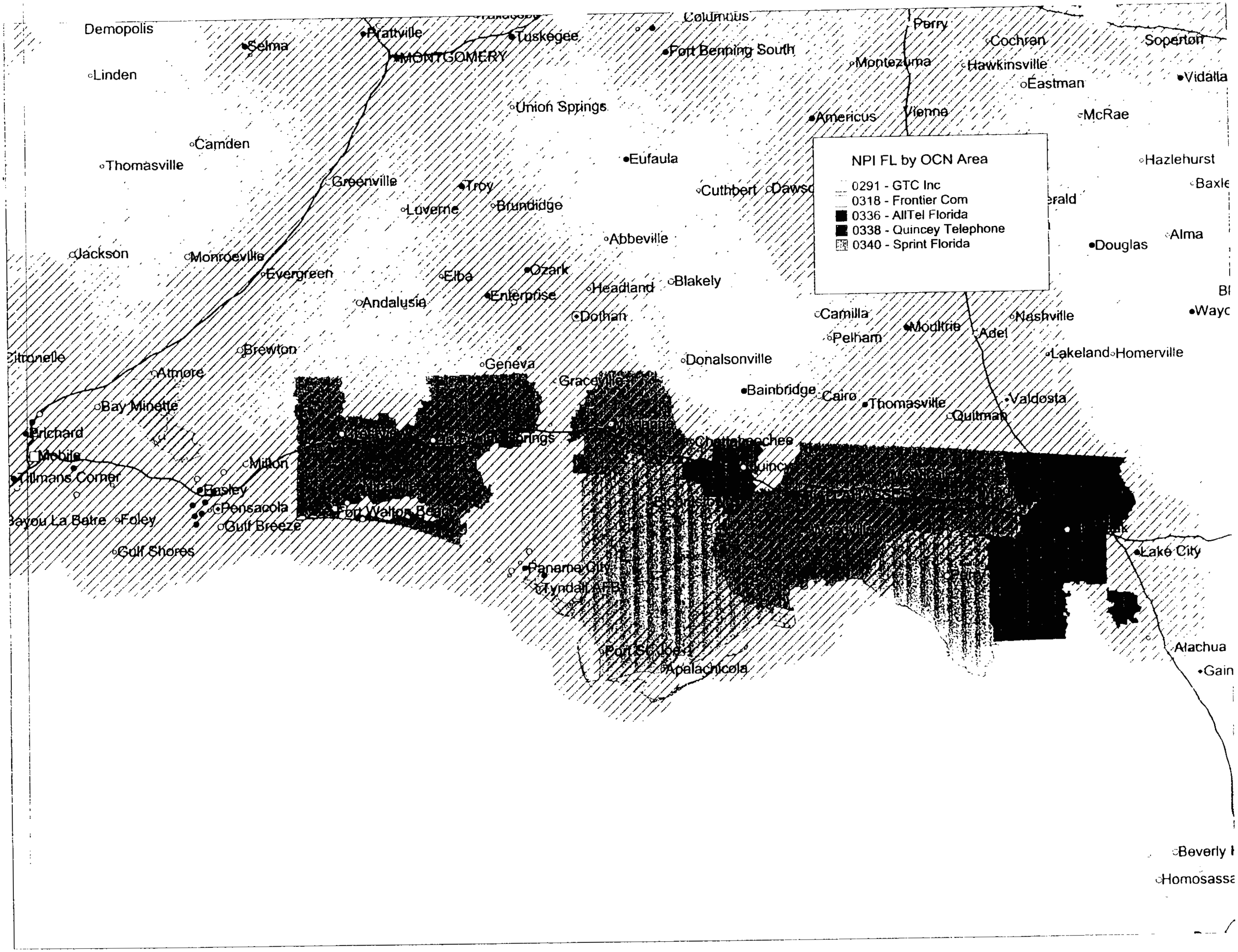
ALTERNATIVE RECOMMENDATION: No. The Commission should issue a declaratory statement that it has the authority to determine the eligibility of Nextel and ALLTEL for Eligible Telecommunications Carrier ("ETC") status pursuant to 47 U.S.C. s. 214(e).

ISSUE 3: Should these dockets be closed?
RECOMMENDATION: Yes. If the Commission votes to dispose of the petitions for declaratory statement, these dockets should be closed.

APPROVED

ATTACHMENT 3

Map of Nextel Partners' coverage areas
in the State of Florida


NPI FL by OCN Area
0291 - GTC Inc
0318 - Frontier Com
0336 - AllTel Florida
0338 - Quincey Telephone
0340 - Sprint Florida
Demopolis
Selma
Prattville
MONTGOMERY
Tuskegee
Columbus
Fort Benning South
Perry
Cochran
Soperton
Montezuma
Hawkinsville
Eastman
Vidalia
Linden
Union Springs
Americus
Vienna
McRae
Camden
Thomasville
Eufaula
Hazlehurst
Greenville
Troy
Brundidge
Luverne
Cuthbert
Abbeville
Douglas
Alma
Jackson
Monroeville
Evergreen
Elba
Ozark
Headland
Blakely
Andalusia
Enterprise
Dothan
Camilla
Pelham
Moultrie
Adel
Nashville
Citronelle
Brewton
Atmore
Geneva
Graceville
Donalsonville
Lakeland
Homerville
Bay Minette
Bainbridge
Cairo
Thomasville
Quitman
Valdosta
Prichard
Mobile
Tillmans Corner
Milton
Chattahoochee
Ensley
Pensacola
Fort Walton Beach
Bayou La Batre
Foley
Gulf Breeze
Gulf Shores
Panama City
Tyndall AFB
Lake City
Alachua
Port St Joe
Apalachicola
Homosassa

ATTACHMENT 4

Declaration of Donald Manning

Before the
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Washington, DC 20554

In the Matter of	)	
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	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
in the State of Florida	)	
	)	

Declaration of Donald Manning

I, the undersigned Donald J. Manning, do hereby declare under penalty of perjury as follows:

1. I serve as Vice-President and General Counsel for Nextel Partners, Inc. ("Nextel Partners") and each of its subsidiary companies, including, but not limited to, NPCR, Inc. d/b/a Nextel Partners.

2. NPCR, Inc. is a wholly-owned, operational-arm subsidiary of Nextel Partners Operating Corp., which is a wholly-owned, operational subsidiary of Nextel Partners, Inc.

3. Nextel Partners, Inc. is a publicly-traded company with its common stock listed on the Nasdaq market, and is broadly owned by both institutional and individual investors.

4. Nextel Partners, Inc.'s President is John Chapple. Vice Presidents include Don Manning, Perry Satterlee, Barry Rowan, Mark Fanning, and Dave Aas. Entities with 5% or more equity positions with Nextel Partners, Inc. include: Credit Suisse First Boston through several funds held by DLJ Merchant Banking, Madison Dearborn Partners, Wellington Management Co., Eagle River Investments, Motorola, Cascade Investments (an investment company controlled by William H. Gates, III), and Nextel Communications, Inc.

5. This Declaration is submitted in support of Nextel Partners' "Petition for Designation As an Eligible Telecommunications Carrier," to which this Declaration is appended.

6. I declare and certify as follows, and as described in the aforementioned Petition, that: Nextel Partners offers, or will offer, all of the services designated by the FCC for support pursuant to Section 254(c)(3) of the Act; that Nextel Partners offers, or will offer, the supported services using its own facilities; and that Nextel Partners advertises, or will advertise, the availability of supported services and the charges therefore using media of general distribution as described in the annexed Petition.

7. I further declare that I have reviewed the annexed Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

8. I further declare that to the best of my knowledge, Nextel Partners, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of Nextel Partners as specified in Section 1.2002(b) of the Commission's Rules are not subject to denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Donald J. Manning
Vice President and General Counsel
NPCR, Inc. d/b/a Nextel Partners

Dated: September 11, 2003

ATTACHMENT 5

Annual High Cost Certifications

June 30, 2003

BY HAND COURIER:

Irene M. Flannery
VP—High Cost and Low Income Division
Universal Service Administrative Company
2120 L Street, NW, Suite 600
Washington, DC 20037

Marlene H. Dortch
Office of the Secretary
Federal Communication Commission
445 – 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 96-45
Interstate Access Support - IAS
Annual Certification Filing

This is to certify that NPCR, Inc., d/b/a Nextel Partners, will use its Universal Service Interstate Access Support-IAS only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the following study areas in the **State of Florida**:

SAC	Company Name	State
210291	GTC, INC – FL	FL
210318	FRONTIER COMMUNICATIONS – SOUTH	FL
210328	VERIZON FLORIDA, INC.	FL
210329	GTC INC. DBA GT COM	FL
210331	ITS TELECOMMUNICATIONS SYSTEMS	FL
210335	NORTHEAST FLORIDA	FL
210336	ALLTEL FLORIDA INC	FL
210338	QUINCEY TELEPHONE CO.	FL
210340	SPRINT – FLORIDA INC	FL
210341	SPRINT – FLORIDA / UTC OF FLORIDA	FL
215191	BELLSOUTH TELECOMM INC	FL

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Date: June 30, 2003

Authorized Representative for
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4500 Carillon Point
Kirkland, WA 98033
(425) 576-3692

June 30, 2003

BY HAND COURIER:

Irene M. Flannery
VP—High Cost and Low Income Division
Universal Service Administrative Company
2120 L Street, NW, Suite 600
Washington, DC 20037

Marlene H. Dortch
Office of the Secretary
Federal Communication Commission
445 – 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 96-45
Interstate Common Line Support and Long Term Support-ICLS
Annual Certification Filing

This is to certify that NPCR, Inc., d/b/a Nextel Partners, will use its Interstate Common Line Support and Long Term Support-ICLS only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the study areas located in the **State of Florida** listed below:

SAC	Company Name	State
210291	GTC, INC – FL	FL
210318	FRONTIER COMMUNICATIONS – SOUTH	FL
210328	VERIZON FLORIDA, INC.	FL
210329	GTC INC. DBA GT COM	FL
210331	ITS TELECOMMUNICATIONS SYSTEMS	FL
210335	NORTHEAST FLORIDA	FL
210336	ALLTEL FLORIDA INC	FL
210338	QUINCEY TELEPHONE CO.	FL
210340	SPRINT – FLORIDA INC	FL
210341	SPRINT – FLORIDA / UTC OF FLORIDA	FL
215191	BELLSOUTH TELECOMM INC	FL

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Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida	)	

Supplement to Petition

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), hereby submits this "Amendment" to Nextel Partners' Petition for Designation ("Petition") as an eligible telecommunications carrier ("ETC") in the State of Florida, filed with the Commission on September 15, 2003.

The instant filing supplements **Attachment 2** of the Petition by adding the written text of the declaratory statement order adopted by the Florida Public Service Commission ("FPSC") on August 19, 2003 in *Petition for Declaratory Statement That NPCR, Inc. d/b/a Nextel Partners, a Commercial Mobile Radio Service Provider in Florida, is Not Subject to the Jurisdiction of the Florida Public Service Commission for Purposes of Designation As an Eligible Telecommunications Carrier*, Docket No. 030346-TP (Declaratory Statement adopted August 19, 2003). The FPSC's order declines jurisdiction over CMRS carriers, and specifically, Nextel Partners, for the purpose of making ETC determinations. With the exception of this supplement to **Attachment 2** of the Petition, all other substantive matters in the Petition as filed remain the same.

Respectfully submitted,

NCPR, INC. d/b/a NEXTEL PARTNERS

By _____

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Date: September 23, 2003

ATTACHMENT 2

Florida Public Service Commission Order
Declining Jurisdiction over Nextel Partners for ETC Designation

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for 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."	DOCKET NO. 030346-TP
In re: Petition for declaratory statement that ALLTEL Communications, Inc., 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."	DOCKET NO. 030413-TP ORDER NO. PSC-03-1063-DS-TP ISSUED: September 23, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

DECLARATORY STATEMENT

BY THE COMMISSION:

I. INTRODUCTION

A. The Parties

By petitions filed April 16, 2003, and April 29, 2003, respectively, NPCR, Inc., d/b/a Nextel Partners (Nextel), and ALLTEL Wireless Holdings, L.L.C. and New York NEWCO Subsidiary, Inc., subsidiaries of ALLTEL Communications, Inc. (ALLTEL), both of which are commercial mobile radio service (CMRS) providers, requested declaratory statements pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, that the Florida Public Service Commission (Commission) lacks jurisdiction to designate CMRS carriers

eligible telecommunications carrier (ETC) status for the purpose of receiving federal universal service support.[1]

Northeast Florida Telephone Company (Northeast Florida) and GTC, Inc. d/b/a GT COM (GT Com) filed petitions to intervene in these dockets on May 22, 2003. TDS TELECOM/Quincy Telephone (Quincy) filed a petition to intervene on May 29, 2003. ALLTEL filed a response but did not oppose the intervention. The petitions were granted by Order Nos. PSC-03-0712-PCO-TP and PSC-03-0713-PCO-TP, respectively, on June 16, 2003.

B. Summary of Ruling

After careful consideration and as discussed, *infra*, the Commission grants Nextel's and ALLTEL's petitions for declaratory statements.

ETC status is a prerequisite for a carrier to be eligible to receive universal service funding. The Federal Communications Commission (FCC) has determined that CMRS carriers, such as Nextel and ALLTEL, may be designated as ETCs. Section 214(e)(6) of the federal 1996 Telecommunications Act (1996 Act) provides that where a carrier is not subject to the jurisdiction of a state commission, then the FCC shall make the ETC determination. The FCC has ruled that, in order for it to consider requests for ETC status, the requesting carrier must provide an "affirmative statement" from the state commission or a court of competent jurisdiction that the state commission lacks the jurisdiction to make the designation.[2] *See Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved 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, FCC 00-208 (released June 30, 2000) at ¶ 93.[3]

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[1] Notice of receipt of Nextel's Petition for Declaratory Statement was published in the May 2, 2003, issue of the Florida Administrative Weekly. Notice of receipt of ALLTEL's Petition was published in the May 16, 2003, issue. The petitioners agreed to toll the statutory time for disposition in order for us to consider their petitions at our August 19, 2003, agenda conference.

[2] We note that numerous state commissions have held that they do not have jurisdiction to designate CMRS carriers ETC status.

[3] *See also FCC 01-283, Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, 16 FCC Rcd 18133; 2001 FCC LEXIS 5313, fn. 46 (released October 5, 2001); FCC 97-419, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to § 214(e)(6) of the Telecommunications Act* (released December 29, 1997).

As discussed, *infra*, this Commission does not have jurisdiction over CMRS carriers for purposes of determining eligibility for ETC status. Indeed, the Florida Legislature has expressly excluded CMRS providers from the jurisdiction of the Commission. As the Commission lacks jurisdiction over CMRS providers, the FCC is the appropriate venue for Nextel and ALLTEL to seek ETC status.

II THE COMMISSION LACKS JURISDICTION OVER CMRS PROVIDERS

A. Lack of Jurisdiction Over CMRS Providers

As a legislatively created body, the jurisdiction of the Commission is that conferred by statute – but no more than that. Chapter 364, Florida Statutes, governs our resolution of this threshold, and dispositive, jurisdictional issue. For present purposes, Chapter 364 expressly limits our jurisdiction to jurisdiction over "telecommunications companies" as set forth in that chapter.[4] A telecommunications company does not include a CMRS provider. Indeed, the Legislature specifically provided to the contrary in Section 364.02(12), Florida Statutes, which expressly states that:

> The term "telecommunications company" *does not include*:
> ...
> (c) A commercial mobile radio service provider;

§ 364.02(12)(c), Fla. Stat. (emphasis added).[5]

The Commission has previously recognized, correctly so, that it lacks jurisdiction over CMRS providers. Specifically, in *In re: 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.*, the Commission noted that, pursuant to Section 364.02(12)(c), Florida Statutes, CMRS providers are "not regulated by this Commission" and that CMRS providers are "not subject to Commission rules." *See* Order No. PSC-00-1243-PAA-TC, Docket No. 991821-TC (July 10, 2000).[6]

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[4] Section 364.01, Florida Statutes, titled "Powers of commission, legislative intent," states that "(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter."

[5] The one exception, not applicable here, is that CMRS providers along with intrastate interexchange telecommunications companies (also not regulated by the Commission) shall continue to be liable for any taxes imposed by the State pursuant to Chapters 202, 203, and 212, Florida Statutes, and any fees assessed pursuant to Chapter 364, Florida Statutes. *See* § 364.02(12), Fla.Stat.

[6] Numerous state commissions have likewise held that they lack jurisdiction to designate ETC

B. The Arguments of the Intervenors

Intervenors' reliance on the Commission's Order in *In re: Establishment of Eligible Telecommunications Carriers Pursuant to Section 214(e) of the Telecommunications Act of 1996* is misplaced. *See* Commission Order No. PSC-97-1262-FOF-TP, issued October 14, 1997, in Docket No. 970644-TP. That order states, in pertinent part:

> We believe that the requirements of the 1996 Act can be met initially by designating the incumbent LECs as ETCs. Upon consideration, we hereby designate the incumbent LECS (ILECs) as ETCs. LECs should continue to serve their current certificated service areas. All other carriers (non-ILECs) who wish to receive ETC status in the service area of a non-rural LEC should file a petition with the Commission for ETC status . . .

Id. at 4. In that order, the Commission also opined that "mobile carriers may serve those areas [where ALECs were prohibited from offering basic local telecommunications services within the territory served by a small LEC before January 1, 2001, unless the small LEC has elected price regulation], and may apply for ETC status." *Id.* at 4.

Reliance on this statement to conclude that this Commission has jurisdiction to designate CMRS carriers as having ETC status is misguided. Simply put, the Commission cannot by fiat simply declare its own jurisdiction where, as the Florida Legislature has made clear, no jurisdiction exists.[7] *See, e.g., Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative*

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status for CMRS carriers. *See, e.g., In the Matter of Designation of Carriers Eligible for Universal Carrier Support*, Docket No. P-100, SUB 133c, 2003 WL 21638308, 2003 N.C. PUC LEXIS 686 (N.C.U.C., June 24, 2003) ("...the Commission ...lacks jurisdiction to designate ETC status for CMRS carriers.... [North Carolina statute] G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction"); *In re Telecommunications Act of 1996*, 2002 WL 1277821, 2002 Va. PUC LEXIS 315, (Va. S.C.C., April 9, 2002) ("The Commission finds that § 214(e) (6) of the Act is applicable to Virginia Cellular's Application as this Commission has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation"); *In re Pine Belt Cellular, Inc.*, Docket U-4400, Alabama Public Service Commission, 2002 WL 1271460, 2002 Ala. PUC LEXIS 196 (March 12, 2002) ("it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC § 214(e)(6)").

[7] We also note that the issue of the Commission's jurisdiction to determine ETC status

Services, 424 So. 2d 86, 91 (Fla. 1st DCA 1982) (noting that even if an agency's policy concerns might be valid, "[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself.").

Intervenors' public interest argument must likewise fail. Intervenors argue that Florida's public interest would not be served by having competitive carriers, including CMRS providers such as petitioners, designated as ETCs in rural areas. They continue that this Commission is best situated to make the public interest inquiry. This argument is fundamentally flawed. It is only if this Commission has jurisdiction over CMRS carriers in the first instance that the Commission could exercise that jurisdiction to perform the inquiry proposed by Intervenors.

C. Intervenors Run Afoul of *Cape Coral* and its Progeny

The arguments of the Intervenors run counter to the clear teachings of *Cape Coral* and its progeny. Florida law makes clear that the Commission does not have jurisdiction over CMRS carriers. Even if there was doubt about that proposition, which the Florida Legislature has made clear there is not, such doubt would have to be resolved against finding jurisdiction. As the Florida Supreme Court made clear in *City of Cape Coral v. GAC Utilities, Inc., of Florida:*

> All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute. This, of course, includes the Public Service Commission.... As such, the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State.... Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof,... and the further exercise of the power should be arrested.

281 So. 2d 493, 495-96 (Fla. 1973). *See also Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2002) ("any reasonable doubt regarding its regulatory power compels the PSC to resolve that doubt against the exercise of jurisdiction"); *Dept. of Transp. v. Mayo*, 354 So. 2d 359 (Fla. 1977) ("any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it"); *Schiffman v. Dept. of Professional Regulation, Board of Pharmacy*, 581 So. 2d 1375, 1379 (Fla. 1st DCA 1991) ("An administrative agency has only the authority that the legislature has conferred it by statute"); *Lewis Oil Co., Inc. v. Alachua*

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for CMRS providers was not raised, litigated, or relevant to the holding in Order No. PSC-97-1262-FOF-TP, which designated local exchange companies in Florida as ETCs. We also note that in the time since that holding, Congress, through the enactment of Section 214(e)(6) to the 1996 Act, expressly authorized the FCC to make ETC designations of CMRS providers when states like Alabama, Florida, North Carolina, Virginia, and others lack jurisdiction over such carriers.

County, 496 So. 2d 184, 189 (Fla. 1st DCA 1986) ("Administrative agencies have only the powers delegated by statute").

The Commission has previously (and correctly) recognized the limited nature of its jurisdiction. *See In re: Complaint Against Florida Power & Light Company Regarding Placement of Power Poles and Transmission Lines*, Docket No. 010908-EI, Order No. PSC-02-0788-PAA-EI, Florida Public Service Commission, June 10, 2002; *In re: Complaint and Petition by Lee County Electric Cooperative, Inc. for an Investigation of the Rate Structure of Seminole Electric Cooperative, Inc.*, Docket No. 981827-EC, Order No. PSC-01-0217-FOF-EC, Florida Public Service Commission, January 23, 2001 (recognizing that any doubt as to the Commission's jurisdiction must be resolved against an exercise of jurisdiction).

The authority of this Commission is derived from state law as written by the Florida Legislature, and that authority is expressly limited as it pertains to CMRS providers. Regardless of the merits of the debate of state versus federal designation of ETC status for wireless providers, the Commission must remain cognizant of our role and not regulate beyond our specific mandate. Despite good intentions, we should avoid even the appearance that we are replacing the Legislature's judgment with our own.

Florida as a state certainly has an interest in universal service issues. That interest, however, does not create jurisdiction in this Commission to determine whether CMRS carriers should be granted ETC status (a status, we note, that is one of federal creation),[8] especially where the Legislature has specifically provided that the Commission does not have jurisdiction over CMRS providers.[9] As a creature of statute, this Commission is not free to operate according to its "own "inscrutable wisdom, 'an administrative Frankenstein, once created, (acting) beyond the control of its Legislature creator.'" *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA 1980) (discussing the Parole Commission). Indeed, "[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself." *Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1st DCA 1982).

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[8] We note that other states have an interest in universal service issues, notwithstanding that their utility commissions do not regulate CMRS providers. *See, e.g., N.C. Gen. Stat. A. § 62-110, § 105-164.4c and § 143B-437.40 (North Carolina); Virginia's Universal Service Plan (Va. S.C.C. Case Nos. PUC970135 and PUC970063) and Va. Code Ann. § 56-468.*

[9] Section 364.025, Florida Statutes, provides for alternative local exchange companies (now known as competitive local exchange companies by virtue of Chapter 2003-32, § 3, Laws of Fla., amending Section 364.02, Florida Statutes), which are "telecommunications companies" subject to Commission jurisdiction, to apply to the Commission for universal service provider and carrier of last resort status. Notably, no similar provision exists regarding CMRS providers.

D. Conclusion

Based on the foregoing, the Commission does not have jurisdiction over CMRS providers for purposes of determining eligibility for ETC status pursuant to 47 U.S.C. § 214(e).

III. A DECLARATORY JUDGMENT OF "NO JURISDICTION" IS PROPER

Section 120.565, Florida Statutes, governs the issuance of a declaratory statement. In pertinent part, that section provides:

> (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.

Rule 28-105.001, Florida Administrative Code, further explains that: "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." The purpose of a declaratory statement by an administrative agency is to allow a petitioner to select a proper course of action in advance. *Novick v. Dept. of Health, Bd. of Medicine*, 816 So. 2d 1237 (Fla. 5th DCA 2002).

Petitioners have satisfied the requirements for the issuance of a declaratory statement by the Commission. At issue is the applicability of Chapter 364, Florida Statutes, which excludes CMRS providers from Commission jurisdiction. As CMRS providers seeking ETC status, which status is a prerequisite to being eligible to receive federal universal service funds, petitioners are "substantially affected persons" within the meaning of Section 120.565, Florida Statutes. Petitioners have stated with particularity their circumstances and have identified the statutory provision that applies to their circumstances.

Intervenors urge us to deny the petitions for declaratory statement. Intervenors first assert that to receive ETC status in the service area of a rural LEC, a non-ILEC must file a petition proposing an appropriate service area and demonstrating that designation as an ETC is in the public interest, a determination that they assert can properly be made only after a formal administrative hearing and not in a declaratory statement proceeding. They next assert that the petitions require a response that amounts to a rule stating that CMRS providers are not subject to the jurisdiction of the Commission for purposes of designation as an ETC. Finally, Intervenors assert that the petitions fail to allege an uncertainty about a Commission statute, rule, or order

and thus, fail to meet the pleading requirements of Rule 28-105.001, Florida Administrative Code.

Intervenors' arguments fail. Regarding their first assertion, where the Commission lacks jurisdiction, as it does here, it would be illogical for a party to seek to have the Commission exercise jurisdiction to do something it does not have the power to do. To exercise jurisdiction, the Commission would have to determine that the petitioners are telecommunications companies, a determination that is expressly precluded by the statute. As the Commission does not have jurisdiction to make the ETC designation for CMRS providers, it is not necessary for Nextel or ALLTEL to file an application that addresses the eligibility requirements to be designated an ETC.

We also disagree that we should deny the petitions for declaratory statement because the statement requested would amount to a rule. On numerous occasions, the Commission has resolved controversies about the scope of our jurisdiction in declaratory statement proceedings. *See In re: Petition of St. Johns Service Company for declaratory statement on applicability and effect of 367.171(7), Florida Statutes*, Order No. PSC-99-2034-DS-WS, issued October 18, 1999, in Docket No. 982002-WS; *In re: Petition of PW Ventures, Inc., for declaratory statement in Palm Beach County*, Order No. 18302, issued October 16, 1987, in Docket No. 870446-EU, *aff'd on other grounds, PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988).

Intervenors confuse the notion of a rule with the issue of jurisdiction. Commission jurisdiction over a matter either exists or it does not. It cannot be created or denied by a rule. Indeed, the Commission could only issue a rule where it has jurisdiction over the subject matter of the rule. Further, determining whether the Legislature has vested the Commission with jurisdiction is typically a one-time determination, whereas rulemaking is more appropriate for such matters as recurring issues, implementation of statutes, and codification of policy.

Finally, we dismiss the assertion that the petitions should be denied for failing to allege an uncertainty about a Commission statute, rule, or order. The petitions seek a statement that our statutes, rules, and orders are not applicable to ALLTEL or Nextel as CMRS providers, for the purposes of determining whether they are eligible to receive federal universal service funding. As set forth herein, we agree. And on the facts presented, this determination is properly made in a declaratory statement proceeding. We therefore conclude that the petitions satisfy the requirements for a declaratory statement.

Based on the foregoing, we grant the petitions and declare that Nextel and ALLTEL, as commercial mobile radio service providers, are not subject to the jurisdiction of the Florida Public Service Commission for purposes of designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e).

Now, therefore, it is

ORDERED by the Florida Public Service Commission that the Petitions for a Declaratory Statement filed by Nextel & ALLTEL are granted. It is further

ORDERED that the substance of the Declaratory Statement is as set forth in the body of this Order. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission this 23rd Day of September, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

CTM

Commissioner Baez dissents. Chairman Jaber dissents from the majority's decision with the following opinion:

Rule 28-105.001, Florida Administrative Code, states in part: "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." The circumstances brought before us in these two cases are not limited to the two wireless providers that have filed petitions for declaratory statement. Rather, our decision will impact not only all of the wireless carriers and other telecommunications service providers in Florida, but, more importantly, will impact the state's overall universal service policy. This is a case of first impression, and will result in a policy of general applicability. I do not believe a declaratory statement is the appropriate mechanism for deciding this very important issue. I would rather establish an expedited

proceeding that allows us to hear from other providers in the form of testimony, if appropriate, or legal briefs on federal and state law regarding ETC status and the impact of such on Florida's stance on universal service. In making a decision regarding the jurisdictional issues in this matter, it is critical to fully understand the ramifications of our decision on the size and applicability of the federal universal service fund to Florida's ratepayers. The declaratory statement process does not allow an opportunity for that critical review. Without input from all affected parties on the legal and policy implications of this decision, I am uncomfortable with the conclusion that we do not have jurisdiction in this matter. For these reasons alone, I dissent.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

The undersigned, an attorney in the law firm of Catalano & Plache, PLLC hereby certifies that on this 23rd day of September, 2003, a true and correct photocopy of the foregoing "Supplement" was sent by hand delivery to the following persons:

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