

**FLORIDA PUBLIC SERVICE COMMISSION**

RE: August 11, 2009 Staff Workshop on )  
Policy Issues Relating to Eligible ) Undocketed  
Telecommunications Carriers )  
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**POST-WORKSHOP COMMENTS OF SPRINT NEXTEL**

Sprint Nextel Corporation on behalf of itself and its wholly-owned subsidiaries providing wireless telecommunications services in the State of Florida (collectively “Sprint Nextel”) provide the following comments on the preliminary rule language concerning the eligibility requirements for carriers desiring designation as eligible telecommunications carriers (“ETCs”) in Florida, as discussed at the Florida Public Service Commission (“Commission”) Staff Workshop on August 11, 2009. As Staff is aware, Sprint Nextel is a national commercial mobile radio service (“CMRS”) provider and is designated as an ETC in twenty-five (25) jurisdictions. Sprint Nextel offers wireless telecommunications services in Florida, and two of its operating entities have been designated by the Federal Communications Commission (“FCC”) as eligible telecommunications carriers (“ETCs”) in portions of Florida.<sup>1</sup> NPCR, Inc. (“Nextel Partners”) is designated as an ETC in portions of the panhandle of Florida, mostly to the north and west of Tallahassee. Sprint Corporation n/k/a Sprint Nextel Corporation

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service; Sprint Corporation; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, North Carolina, Tennessee and Virginia*, CC Docket No. 96-45, Order, DA 04-3617 (rel. Nov. 18, 2004); *In the Matter of Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and Virginia*, CC Docket No. 96-45, Order, DA 04-2667 (rel. Aug. 25, 2004), corrected by Erratum (Sept. 13, 2004); see also 47 C.F.R. § 54.401.

("Sprint PCS") is designated as an ETC in a broader area covering roughly 50% of the state.

### **I. General Comments**

To the extent the Commission intends to propose rules that would be applied to existing ETCs, it should carefully consider the scope of the authority granted to the Commission under state and federal law. In particular, the rules must reflect the Commission's jurisdictional limitations with respect to competitive ETCs that were previously designated as ETCs by the FCC. Under federal law, those existing designations will continue to be administered solely under the FCC's jurisdiction. At the time the FCC established additional ETC designation and annual reporting requirements in 2005, the federal agency reasserted its ongoing regulatory authority and oversight over those carriers previously designated as ETCs pursuant to the FCC's authority under 47 U.S.C. § 214(e)(6). Among other things, the FCC required all carriers previously designated under section 214(e)(6) to submit all of the information required of new applicants under FCC Rule 54.202(a). See 47 C.F.R. § 54.202(b). Likewise, the FCC required all carriers previously designated under section 214(e)(6) to annually file with the FCC information demonstrating their continued compliance with the federal ETC requirements. See 47 C.F.R. § 45.209. Thus, as set forth in the FCC's regulations, it is the FCC, not this Commission, that will retain jurisdiction over carriers previously designated under 47 U.S.C. § 214(e)(6).

Moreover, there is well established precedent demonstrating that carriers designated under Section 214(e)(6) remain subject to the FCC's regulatory jurisdiction and oversight, rather than that of the state commission. For example, the FCC originally

designated Western Wireless as a competitive ETC within portions of the State of Wyoming in December, 2000.<sup>2</sup> After the Wyoming Legislature amended state law to authorize the WPSC's designation of wireless ETCs, the WPSC granted Western Wireless' later application to expand its designated service area in the State of Wyoming,<sup>3</sup> specifically noting that the FCC would continue to have sole regulatory authority over the earlier designation.<sup>4</sup> Thus, pursuant to federal law, the two designations are maintained as entirely separate legal entities subject to separate jurisdictional and administrative requirements.

Also, as the Staff and Commission consider ETC policy and rules, particularly with respect to wireless ETCs, Sprint Nextel urges the Commission to carefully consider the authority granted to the Commission under state and federal law. Wireless providers are not regulated by the Commission with regard to the rates, terms and conditions of service. Florida law expressly provides that "wireless telecommunications, including commercial mobile radio service providers" are "exempt from oversight by the commission, except to the extent delineated in this chapter or specifically authorized by federal law."<sup>5</sup> Thus, consistent with § 364.011, Florida Statutes, the Commission may

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<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, *Memorandum Opinion and Order*, DA 00-2896 (rel. Dec. 26, 2000).

<sup>3</sup> *In the Matter of the Application of WWC Holding Co., Inc. d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier*, Docket No. 70042-TA-04-4 (Record No. 8961) & Docket No. 70042-TA-04-5 (Record No. 9256), *Memorandum Opinion, Findings and Order* (Sept. 23, 2005).

<sup>4</sup> *Id.* ¶ 46. Likewise, Western Wireless' separately designated service areas appear to be treated by the Universal Service Administrative Company ("USAC") as wholly distinct service areas for administrative purposes. As set forth in public USAC documents, Western Wireless' earlier FCC-designated service area has been assigned Study Area Code (SAC) 519002; whereas, the area for which the company received ETC designation from the WPSC has been assigned SAC 519007.

<sup>5</sup> 364.011, Florida Statutes.

promulgate rules affecting wireless providers only to the extent that its authority to do so is delineated in Chapter 364, Florida Statutes, or to the extent “specifically authorized by federal law.”

Florida law does not provide the Commission with jurisdiction over wireless ETCs. In fact, the term “eligible telecommunications carriers” is defined in § 364.10(2)(a) to expressly *exclude* wireless providers. Section 364.10(2)(a) provides, “[f]or the purposes of this section, the term ‘eligible telecommunications carrier’ means a *telecommunications company*, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.”<sup>6</sup> (emphasis added) As defined by § 364.02(14)(c), the term “telecommunications company” does not include CMRS providers. Accordingly, neither § 364.10 nor any other section of Chapter 364 delineates Commission jurisdiction over wireless ETCs.

## **II. Comments on Specific Preliminary (Draft) Rule Language**

Sprint Nextel provides the following specific comments on the draft rule language discussed at the workshop, and reserves the right to provide additional comments on specific portions of the proposed rules. Sprint Nextel’s suggested strikes from and additions to draft rule language is provided, followed by comments on the rule.

In general, any proposed rules should be consistent with FCC default rules wherever possible so as to provide ETCs who operate in multiple jurisdictions the flexibility to maintain consistent ETC programs and practices throughout the United States. Accordingly, Sprint Nextel supports the comments of workshop participants who

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<sup>6</sup> 364.10(2)(a).

urged the Commission to reference or incorporate FCC rules rather than repeat them.<sup>7</sup> In addition, any proposed rules should minimize information gathering to what is essential for administering and improving the program and avoid requiring providers to create costly new reporting processes and should be competitively and technologically neutral. Finally, any proposed rules must avoid imposing requirements on wireless ETCs that are not specifically authorized by federal law, since Chapter 364, Florida Statutes, does not provide the Commission with authority over these providers.

**a. Applicant Seeking Designation**

**25-4.066X -Eligible telecommunications carriers.**

**(1) ~~An common carrier that desires~~ applicant seeking designation as an eligible telecommunications carrier shall file a petition for such designation with the Commission. The petition shall include the following: ....**

During the Staff Workshop on August 11, 2009, Staff noted that Section 1 of this rule applies only to new applicants and does not apply to previously-designated ETCs. Sprint Nextel suggests use of the term “applicant” for clarification and for consistency with the rest of the rule.

**b. Applicable Rules and Regulations**

**25-4.066X (1)(o) A statement that the applicant will comply with all applicable state and federal rules and regulations, including all applicable consumer protection and service quality standards. A commitment to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC seeking designation.**

**25-4.066X (3)(a)5. Certification that the eligible telecommunications carrier is complying with applicable service quality standards and consumer protection rules. Certification that the carrier is complying with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC;**

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<sup>7</sup> In response to concerns regarding lag time before the Commission could adopt newly-amended FCC rules, Sprint Nextel notes that § 120.54(6), Fla.Stat., provides a “fast track” process for adopting federal rules.

While the preliminary draft rule correctly acknowledges that not all rules and regulations will be “applicable” (e.g. wireline ILEC rules and regulations cannot be made to apply to wireless ETCs), Sprint Nextel suggests that the rule should reference the specific consumer protection and service quality standards that apply to wireless ETCs. The suggested language is taken from paragraph 28 of the FCC’s Report and Order released March 17, 2005 in CC Docket 96-45. In paragraphs 28 through 31, the FCC discussed the appropriate consumer protection and service quality standards for wireless ETCs, concluding that “[c]onsistent with the designation established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission.” The FCC dismissed comments that urged that all ETCs should be required to submit to the same state laws concerning consumer protection that ILECs must follow, concurring with the Joint Board’s assertion that “states should not require regulatory parity for parity’s sake”, and urging that states should consider whether “a particular regulation is necessary in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC.” (para. 30)

**c. Toll Limitation**

**25-4.066X (2) To qualify as an eligible telecommunications carrier, a common carrier shall provide the following nine services: ...**

**(i) Toll limitation for qualifying low-income consumers. Toll limitation for qualifying low-income consumers is described in subpart E of 47 C.F.R. Part 54. or blocking restricts all direct dial toll access.**

The definition of "toll limitation" in the proposed rule is inconsistent with federal rules and should be revised. Pursuant to Subpart E of the FCC's universal service rules, 47 C.F.R. Section § 54.400(d), the term "toll limitation" references both "toll blocking" and "toll control." This distinction is particularly important for wireless providers, whose systems are incapable of providing "toll blocking" as defined by federal rules. Rule 54.400(b) – (d) defines these terms as follows:

(b) **Toll blocking.** "Toll blocking" is a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(c) **Toll control.** "Toll control" is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(d) **Toll limitation.** "Toll limitation" denotes either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, "toll limitation" denotes both toll blocking and toll control.

Sprint Nextel's suggested clarification would not change the effect of this rule. Consumers could still avoid a deposit if they accept toll limitation and ETCs would still be prohibited from charging for this function.

#### d. Lifeline Outreach

~~25-4.066X (5) An eligible telecommunications carrier shall notify each of its new customers in writing of the availability of the Federal Lifeline, Link-Up for wireline customers, activation fee assistance for wireless customers, or any other assistance program being offered by the Company, within 30 days after receiving telecommunications services. An eligible telecommunications carrier shall advertise the availability of Lifeline and Link-Up services in media of general distribution throughout its service areas.~~

~~(a) The outreach materials must target consumer groups that may be in need of Lifeline, such as seniors, young adults, consumers who live in remote areas,~~

~~wireless users, non-English speaking populations, the disabled community, users of telecommunications relay services, and the unemployed.~~

~~(b) Eligible telecommunications carriers must develop outreach materials and methods designed to reach households that do not currently have telephone service. The outreach materials must be placed in locations where low-income individuals are likely to visit, such as shelters, soup kitchens, public assistance agencies, and on public transportation. Multi-media outreach approaches such as newspaper advertisements, articles in consumer newsletters, press releases, radio commercials, and radio and television public service announcements are also acceptable. An eligible telecommunications carrier shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.~~

Sprint Nextel believes the preliminary draft rule is unnecessary and potentially very costly. Present FCC guidelines for outreach and publicity for Lifeline and Link-Up are sufficient to ensure ETCs are satisfying their obligations and also permit ETCs flexibility in undertaking publicity and outreach within their business plans. See 47 C.F.R. § 54.405(b). No additional rules are necessary.

Further, federal law does not require ETCs to comply with state-specific Lifeline rules regarding publicity for Lifeline service. Rather, federal law provides that an ETC must comply with some, but not all state Lifeline rules or regulations in states such as Florida that have established their own Lifeline program.<sup>8</sup> Specifically, ETCs must comply with state rules or regulations regarding five specific issues:

- 1) Eligibility criteria, as specified in 47 C.F.R. §§ 54.409(a) and 54.415(a);
- 2) Certification of income, as specified in 47 C.F.R. § 54.410(a)(1);
- 3) Verification of continued eligibility, as specified in 47 C.F.R. § 54.410(c)(1);

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<sup>8</sup> Of course, the Commission requires delegated Legislative authority to make state Lifeline rules and regulations. As stated above, in this rulemaking the Commission must consider the scope of its authority as granted by the Legislature and the limitations of its authority over wireless ETCs.



- 4) Procedures for resolving disputes concerning eligibility and the termination of Lifeline assistance due to ineligibility, as specified in 47 C.F.R. § 54.405(c)-(d); and
- 5) Recordkeeping requirements, as specified in 47 C.F.R. § 54.417(a).

The draft rule does not fall within any of the above categories and accordingly, is not “authorized by federal law” for application to wireless ETCs as required by § 364.011 Florida Statutes.

**e. Access to Records**

**25-4.066X (7) The Commission shall have access to the records and property of all eligible telecommunications carriers to the extent necessary to verify information reported or required to be reported pursuant to this rule. Each eligible telecommunications carrier shall retain its eligibility documentation as a designated eligible telecommunications carrier, as well as for its customers receiving Lifeline discounts, for a period of three years. Any telecommunications company that is designated as an eligible telecommunications carrier which keeps its records outside of Florida shall reimburse the Commission for the reasonable travel expenses incurred by each Commission representative during any review of the out-of-state records of the eligible telecommunications carrier or its affiliates. Reasonable travel expenses are those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business. An eligible telecommunications carrier which keeps its records out of state has 1020 working days, unless the Commission agrees to another time period, to make those records available at the company’s office located in Florida or another mutually agreed upon location in Florida. Reasonable requests for additional time shall not be denied.**

As discussed fully above, wireless ETCs are neither “telecommunications companies” nor “eligible telecommunications carriers” under Florida law. The statute cited in the preliminary draft rules as providing authority to assess travel costs, § 364.016, “Travel Costs,” gives the commission “authority to assess a telecommunications company [emphasis added] for reasonable travel costs associated with reviewing the records of the telecommunications company and its affiliates when such records are kept out of state.” As noted above, 364.02(14)(c) states that “[t]he term ‘telecommunications

company' does not include ... a commercial mobile radio service provider." Thus, the travel cost assessment provisions cannot be applied to wireless ETCs.

To the extent the Commission has jurisdiction to review the records of an eligible telecommunications carrier and require that the ETC provide access at a Florida location, more than 10 working days should be allowed to permit duplication of records, shipping, and arrangements for reviewing. Sprint Nextel proposes at least 20 working days as a reasonable timeframe for most records with accommodation for reasonable requests for additional time where necessary.

**f. Relinquishment**

~~25-4.066X (8) An eligible telecommunications carrier may relinquish its designation for an area served by more than one eligible telecommunications carrier by providing a 12-month advance notice to the Commission, in writing, of its intention. The relinquishing eligible telecommunications carrier shall ensure that all customers served by it will continue to be served, and will provide sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. Any such purchase or construction shall be completed within one year after the Commission approves such relinquishment.~~

~~(a) If no other eligible telecommunications carrier is designated for that area, the relinquishing carrier shall remain as the eligible telecommunications carrier for that area until the Commission designates an alternative eligible telecommunications carrier. In such a case, the Commission shall notify the relinquishing carrier and the administrator of the federal fund that eligible telecommunications carrier status is still in effect.~~

~~(b) If an eligible telecommunications carrier seeks to discontinue any service, it shall notify affected customers and the Commission 60 days prior to discontinuance of service.~~

The requirements and procedures for relinquishment are set forth in 47 C.F.R. §

54.205. That rule provides as follows:

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications

carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

(b) Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

The preliminary draft rule is unnecessary and ill-advised. First, it is substantially duplicative of the federal rule, so there is no need to address the same issues separately. Second, it creates confusion and in some cases conflict with the federal rule by using phrasing that is similar to but different from the federal rule. For instance, it creates an arbitrary notice period of twelve months **before** relinquishment. The federal rule states only that “advance notice” be given before relinquishment but creates a time limit (not to exceed twelve months) for completion of purchase or construction of adequate facilities **“after** the state commission approves such relinquishment”. The preliminary draft rule also conflicts with the federal rule in that it shifts the burden of ensuring that customers continue to be served from the state commission under the federal rule (“the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served...”) to the relinquishing carrier itself (“[t]he relinquishing eligible telecommunications carrier shall ensure that all customers served by it will continue to be served...”). Obviously, a relinquishing carrier does not have the regulatory authority to

require other ETCs to ensure all customers are served. Based on the conflict between the preliminary draft rules and the federal rules and the potential for substantial confusion, it seems ill-advised to seek to adopt a Florida rule that is merely duplicative of the federal rule.

Sprint Nextel agrees with comments made during the workshop that subsection (b) is vague and overly broad in requiring an ETC to provide notice pursuant to the rule if it "discontinues any service." For instance, is the rule intended to require notice discontinuance of service to any particular customer? It is not clear how this requirement relates to the subject of the preliminary draft rule concerning relinquishment of ETC status. In addition, the Commission does not have jurisdiction to regulate the rates, terms or conditions of wireless service and could not enforce such a rule as to the service offerings of a wireless ETC.

### **III. Conclusion**

Sprint Nextel appreciates the opportunity to participate in the workshop and provide the foregoing comments. We are willing also to provide any further information or clarification to the staff or commissioners.

Respectfully submitted this 14<sup>th</sup> day of September, 2009.



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