

FLORIDA PUBLIC SERVICE COMMISSION

RE: August 20, 2007 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 related to the Staff Workshop on Policy Issues Relating to Eligible Telecommunications Carriers (“ETCs”) that was held at the Florida Public Service Commission (“Commission”) offices on August 20, 2007. Sprint Nextel supports the deliberative process the Staff and Commission have followed in developing policy and rules and appreciates the opportunity to comment on the discussions held during the workshop. In considering and developing ETC policy, Sprint Nextel urges the Staff and Commission to ensure that federal universal service support to ETCs continues to be used to expand choices for Florida consumers and to add to Florida’s telecommunications infrastructure in a manner consistent with State and Federal law. In particular, the Commission should reject policies urged by some of the incumbent local exchange carrier ETCs (“ILEC ETCs”) to discriminate against competitive ETCs by adding unnecessary requirements, many of which have already been considered and rejected by the Federal Communications Commission (“FCC”). Such discriminatory ETC policies would serve only to reduce federal universal service support in Florida and deny Floridians the benefit of valuable infrastructure and services.

The objectives of the Commission in setting ETC policies for Floridians should include what have historically been policies of the FCC and the Federal-State Joint Board on Universal Service: to foster competitive alternatives to ILECs through commitment to the principle of competitive and technological neutrality.

I. Introduction

A. Sprint Nextel

Sprint Nextel is a national commercial mobile radio service ("CMRS") provider and is designated as an ETC in twenty-four (24) jurisdictions. Sprint Nextel offers wireless telecommunications services in Florida, and two of its operating entities have been designated as eligible telecommunications carriers ("ETCs") in portions of Florida by the Federal Communications Commission ("FCC").¹ 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 ("Sprint PCS") is designated as an ETC and authorized to provide Lifeline service in a broader area covering roughly 50% of the state.

B. Commission's Authority

As the Staff and Commission consider ETC policy and rules, particularly with respect to wireless ETCs, Sprint Nextel urges that the Commission carefully consider the authority granted to the Commission under state and federal law. Because no policies or rules have been proposed, Sprint Nextel cannot discuss the Commission's authority in

¹ *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.

detail in these comments, but would like to address the Commission's authority generally. 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."² Thus, consistent with §364.011, Florida Statutes, the Commission may 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."

"Eligible telecommunications carriers" as defined in §364.10(2)(a) 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."³ "Telecommunications company" is defined to expressly exclude CMRS providers.⁴ Thus, neither §364.10 nor any other section of Chapter 364 delineates Commission jurisdiction over wireless ETCs.

Moreover, the Commission must acknowledge its jurisdictional limitations with respect to competitive ETCs, like Sprint Nextel, 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.

² 364.011, Florida Statutes.

³ 364.10(2)(a).

⁴ 364.02(14)(c). "The term 'telecommunications company' does not include ... a commercial mobile radio service provider."

C. Ill-Advised ILEC Proposals

During the Workshop, several ILEC ETC participants proposed criteria for designating competitive ETCs that are either unsupported by applicable law, contrary to established FCC ETC policy, or just plain bad policy in terms of providing Floridians with the benefits of the services intended for support by the federal universal service system. (Often they are all three of these.) The essential message of these ILEC participants is that competitive ETCs should be required to build out ubiquitous network to serve the entire ETC service area (mirroring the ILEC footprint) and comply with legacy ILEC regulatory obligations as a condition to receiving USF support pursuant to ETC designation. While it is not clear why this is necessary from a policy or legal perspective, it appears these ILEC ETCs are upset with the obligations they have independent of their obligations as an ETC and believe that competitive ETCs should “share the pain.” Specifically, the ILEC ETCs lament their carrier of last resort (“COLR”) obligations that apply as a result of their historical role as a rate-of-return guaranteed public utility. Obviously, this is not a sound basis for policymaking. Without such conditions enforced on competitive ETCs, the ILECs allege that competitive ETCs would receive federal USF funds “to serve areas that they would serve anyway.” Thus, the ILEC ETCs also urge that competitive ETCs be required to spend USF funds only on areas that would otherwise go unserved. The ILEC ETCs’ assertions are absurd and are really nothing more than a solution in search of a problem. They certainly would not improve service and choice for Florida consumers who benefit from competitive ETCs’ receipt of USF funds.

First, competitive ETCs have served and continue to serve and expand in ETC designated areas of Florida using USF support that they would not otherwise be able to serve. All federal USF support provided to competitive ETCs in Florida is spent in Florida in the areas where competitive ETCs are designated. Substantiation of this spending is on file at the FCC. If competitive ETCs had been denied designation (or are denied in the future), consumers living in the designated areas would have less choices and in some cases no service alternative to the ILEC. The ILEC ETCs offer no proof why competitive ETCs “would invest anyway” in these areas that have been slated by the FCC as requiring USF support.

Second, there is no disparity presently between how competitive ETCs and ILEC ETCs are treated under the existing rules and policies governing universal service support with respect to service requirements: upon reasonable request, both competitive ETCs and ILEC ETCs must provide the universal service supported services throughout the ETC designated service area. The FCC has recognized that “a new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request.”⁵

Third, the FCC has made it clear that a telecommunications carrier’s inability to provide ubiquitous service at the time of its request for ETC designation should not preclude its designation as an ETC. The FCC has further determined that “new entrants must be allowed the same reasonable opportunity to provide service to requesting

⁵ *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, rel. August 10, 2000, para. 17.*

customers as the incumbent LEC, once designated as an ETC.”⁶ This is wise policy because, unlike the ILECs, who have been able to finance their networks with implicit and explicit subsidies over many decades, operating under a cost-of-service, guaranteed rate of return federal regime, competitive ETCs like Sprint Nextel have only had the benefit of federal USF support for a very short period. Requiring competitive ETCs to meet onerous service area and buildout requirements would only serve to make competitive ETC designation impractical and unattractive, ultimately limiting the benefit of USF support to Floridians.

Fourth, to the extent the ILEC ETCs are concerned about the practice called “creamskimming” (where a provider seeks ETC designation below the study area level of a rural ILEC), the FCC already has addressed the concern.⁷ The FCC has done so without implementing any of the requirements urged by the ILECs such as requiring competitive ETCs to invest federal USF support in specific geographic locations within the designated service area, requiring competitive ETCs to use funds only in unserved areas, or requiring competitive ETCs to build out and mirror the ILEC footprint. Such policies are ill-advised because they would limit a competitive ETC’s flexibility to use USF funds to maximize the benefits to all consumers in their designated areas.

The Commission should see these ill-advised ILEC ETC proposals for what they are: an attempt to either seek re-hearing of policies that have already been proposed and rejected at the federal level or to limit competitive entry in their service areas, or both. It is important for the Commission to note carefully what the existing federal ETC law is, as opposed to what the ILECs may wish it was.

⁶ *Id.*

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, *rel.* March 17, 2005, para. 41.

II. Comments on Specific Workshop Questions

Sprint Nextel provides the following specific comments and responses to the questions circulated and discussed at the workshop.

1) What is the role and authority of the FPSC in the USF process?

As the Commission considers ETC policy and rules, particularly with respect to wireless ETCs, it should carefully consider the scope of the authority granted to the Commission under state and federal law. In particular, the Commission must acknowledge its 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). 47 C.F.R. §54.202(b) ("Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier . . . must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under Sec. 54.209.") 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 the state commission. For example, pursuant to the determination of the Wyoming Public Service Commission (WPSC) that it did not have jurisdictional to designate a wireless carrier as an ETC, the FCC designated Western Wireless as a competitive ETC within portions of the State of Wyoming in December 2000.⁸ The Wyoming Legislature subsequently amended the state Telecommunications Act to authorize the WPSC's designation of wireless ETCs. Consistent with this statutory amendment, the WPSC granted Western Wireless' later application to expand its designated service area in the State of Wyoming.⁹ Notably, however, the WPSC's subsequent action to designate Western Wireless as a competitive ETC for a larger geographic area did not divest the FCC of its regulatory authority over the company's earlier designation. Indeed, the WPSC specifically noted Western Wireless position that that the FCC would continue to have sole regulatory authority over that designation.¹⁰ 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;

⁸ *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).

⁹ *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).

¹⁰ *Id.* ¶ 46.

whereas, the area for which the company received ETC designation from the WPSC has been assigned SAC 519007. Thus, pursuant to federal law, the two designations are maintained as entirely separate legal entities subject to separate jurisdictional and administrative requirements.

- 2) How many ETCs should be designated in a rural wire center?
- 3) How many ETCs should be designated in a non-rural wire center?
- 4) If a limit is set on the number of ETCs designated in a wire center, how should it be decided which ETC(s) serve it? (e.g., one wireline & one wireless?)

There should be no arbitrary limit set for the number of ETC designations in either rural or non-rural areas. Setting an arbitrary limit or only designating an ILEC in a particular area will limit USF funding to the state and fail to achieve the goal of providing all Floridians, including those in rural and high cost areas, with the same types of choices in telecommunications services that are available in urban areas. Designation should be competitively neutral and not discriminate between wireline and wireless ETCs.

- 5) How should "Public Interest" be determined for ETC designation in a rural area?
- 6) Can a state apply a "Public Interest" standard found in § 214(e)(2) of the Telecommunications Act of 1996, to carriers seeking ETC status in non-rural study areas? If so, how should "Public Interest" be determined for ETC designation in a non-rural area?

Sprint Nextel supports the flexible approach taken in the FCC's Report and Order released March 17, 2005 in CC Docket 96-45 (paragraphs 44-57). Specifically, the same basic public interest analysis may be applied in rural and non-rural areas except for the creamskimming analysis which should be applied consistent with FCC guidance only for

applicants seeking designation below the service area level of a rural incumbent LEC. The factors to be considered include the benefits of increased choice of service offerings, the advantages of a particular service offering (including the mobility and reduction in toll charges), and the potential creamskimming effects (for applicants seeking designation below the service area level of a rural incumbent LEC). Consistent with the FCC's policy, the impact on the size and sustainability of the high cost fund should not be a factor in specific designations because analyzing the impact of one ETC on the overall fund may be inconclusive.

7) What additional criteria should be required to obtain ETC status for high-cost funds? (e.g., USF funds must be invested in Florida? USF funds must be used in unserved areas?)

As discussed above, Commission's policy should not seek to micromanage the use of USF funds by an ETC. The funds must be used to serve the ETC designated area and there should be no further requirements that the funds be spent within a particular geographic area within the designated area or in unserved areas only. Creating additional requirements for investment of the funds could have the unintended effect of limiting the benefits of the funds to Floridians because decisions on investment would be driven by arbitrary criteria instead of maximizing the benefit to consumers overall in the ETC designated area. The Commission should also consider the rather absurd outcome if the Commission adopts the ILEC ETCs' proposal to allow USF funds to be used in unserved areas only: ILEC ETCs would no longer qualify to receive USF funds because, as Mr. Staihr of Embarq pointed out, ILECs generally have no unserved areas.

- 8) Pursuant to § 214(e)(1), should an entity be required to establish its ability to serve all customers of the current ETC, if the incumbent ETC relinquishes its designation?

As discussed above, no requirements beyond the existing service requirements set forth in the FCC's ETC policy is necessary. The FCC already requires that competitive ETCs are required, as the incumbents are required, to extend their network to serve new customers upon reasonable request.

- 9) In Order No. PSC-07-0288-PAA-TP, the FPSC concluded that “. . . we now have jurisdiction to consider CMRS applications for ETC designation.” Given that the FCC's jurisdiction to designate a carrier as an ETC, in § 214(e)(6) of the Telecommunications Act of 1996, is premised on a state commission not having jurisdiction, can the FCC designate any additional carriers within Florida?

- 10) Can the FCC continue to perform annual certification of carriers that it has designated if it no longer has jurisdiction under § 214(e)(6) of the Telecommunications Act of 1996?

As set forth above in response to Question 1, federal law clearly dictates that the FCC shall continue to exercise sole jurisdiction and regulatory oversight over carriers previously designated as ETCs under section 214(e)(6) of the federal Telecommunications Act. The annual certification and reporting requirements set forth in FCC 54.209 require such carriers to report directly to the FCC. Accordingly, notwithstanding any intervening changes in state law, federal law fully occupies the field and there is no place for a state commission to intercede in the FCC's continued oversight of such ETC designations.

11) Should an ETC be required to offer all supported services pursuant to 47 C.F.R. § 54.101(a)(1), not just, e.g., Lifeline and Link-Up?

An ETC should be required to offer supported services consistent with its designation order. Sprint Nextel's designation requires it to offer all supported services and it will continue to do so.

12) If an ETC uses its ETC designation only for the purposes of providing Lifeline service, should a waiver be sought of other requirements to offer services? What is the extent of the FPSC's authority to grant such waivers?

Sprint Nextel has not evaluated this issue and does not have a position.

13) What can Florida do to relinquish its role as being the number one net contributor to the USF fund?

Sprint Nextel believes that the Commission can make progress in narrowing the "net contributor" gap by ensuring its ETC policies are competitively and technologically neutral and apply the public interest standard in a manner consistent with FCC policy. This will continue to advance the goals of putting federal USF funding to use in Florida to increase the choice of service offerings in rural and high cost areas. Sprint Nextel believes that adopting the ill-advised policies advanced by some of the ILEC ETCs to make it impractical for competitive ETCs to apply for designation will exacerbate the net contributor situation by reducing the amount of USF support available to serve Floridians.

14) In considering the "Public Interest" standard for ETC designation, to what degree should the following aspects be considered:

- a. The benefits of increased customer choice?
- b. The impact of the designation on the universal service fund?
- c. The unique advantages and disadvantages of the competitor's service offering?

It is essential that the Commission consider the benefits of increased customer choice and the unique advantages of the competitor's service offering if it is to fulfill the goal of providing all consumers with the types of services available to customers in urban areas. The FCC has considered such factors prominently in its public interest analysis and so should the FPSC. As mentioned above, the impact on the size and sustainability of the high cost fund should not be a factor in the public interest analysis because analyzing the impact of one ETC on the overall fund may be inconclusive.

15) How should the comparable local usage requirement of ETC designation be considered?

The FCC has looked at this issue and determined that the comparable local usage requirement does not require a competitive ETC's local usage plan to match that of the competing ILEC exactly. In fact, the FCC expressly recognized the benefits and consumer appeal of competing alternatives with larger "local" (non-toll) calling areas that save consumers toll charges. For instance, wireless ETCs generally have nationwide calling and, of course mobility, which are attractive features to many consumers. Thus, even though wireless nationwide "local" calling is not unlimited in terms of minutes of use, the FCC has determined that such plans satisfy the local usage requirement. The FPSC should apply the same comparable local usage analysis to ensure consumers have access to popular alternatives to the ILEC local usage plans.

16) Should the amount of per-line support received by the incumbent LEC be a consideration in ETC designation?

Sprint Nextel does not believe that the amount of per-line support received by the ILEC should be a consideration in ETC designation. The FCC has declined to adopt a

specific national per-line support benchmark for designating ETCs. A per-line benchmark that denies entry to competitive ETCs is likely to restrict or prevent consumers in those areas from having a choice of services and competitors available to consumers in more urban areas.

17) Should a requirement of one line per household for USF be imposed? Does the FPSC have the authority to take such action?

No, the FCC (at the explicit direction of Congress) has rejected a recommendation to limit high-cost support to a single connection that provides access to the public telephone network and so should this Commission. More importantly, however, this Commission has no authority to impose such a limitation. Administration of the federal universal service support funding mechanisms, including any expansion or limitation on the distribution of such funds, are matters of federal law subject to FCC oversight.

18) Should ETCs be required to list the projects and locations of all projects for which USF funds will be used in their five-year plans? Should ETCs be required to provide an explanation if a project isn't completed by the time of the next annual recertification?

The FCC recently strengthened its reporting requirements and Sprint Nextel presently is required to submit progress updates on its service improvement plan, an explanation of how much support was received and how it was used in each wire center, and an explanation of why network improvement goals were not met. The FCC annual reporting requirements are set forth in the FCC's Report and Order released March 17, 2005 in CC Docket 96-45 (paragraphs 68 through 72). Sprint Nextel believes these requirements are more than sufficient to monitor use of the funds but believes the service improvement

plan should be limited to two years. Five year plans are not useful or instructive because plans change too quickly. A two-year plan is would be much more accurate and useful.

19) How should the benefit be measured of adding plant in a wire center using USF funds? (e.g., more customers? more handsets? better coverage?)

Adding plant (capital expenditures) is not the only use of USF funds. An ETC may use USF funds for the maintenance and provisioning of service as well, including rent, backhaul, utilities and other operational expenses. In deciding how to make the most efficient use of USF funds, ETCs continuously make judgments based on a number of service-related factors that include trade-offs (e.g. whether to build a new cell site to expand the footprint in a rural area or increase capacity at an existing site in order to reduce dropped calls). By adopting any particular and potentially arbitrary measurement that favors some factors over others, the Commission would substitute the blind judgment of the measurement for more flexible, balanced judgment and planning by the ETC..

20) What criteria should be used to determine if an ETC is meeting the Lifeline and Link-Up advertising requirements?

Sprint Nextel believes the present FCC guidelines for Lifeline and Link-Up are sufficiently clear to ensure ETCs are satisfying their obligations. No criteria are necessary.

21) What criteria should be met if an ETC decides it wishes to relinquish its ETC designation?

In the highly unlikely event an ETC chooses to relinquish its ETC designation, the requirements and procedures to effectuate the relinquishment are set forth in 47 C.F.R. §

54.205. Accordingly, the Commission need not consider the adoption of any criteria as the requirements are already mandated by federal law.

22) What are the differences in the requirements to be an ETC versus the requirements of a carrier of last resort (COLR)?

23) Do the responsibilities associated with ETC designation differ from those afforded a COLR under state law? If so, what are the differences and similarities?

As a practical matter, Sprint Nextel does not believe there is a significant difference between ETC and COLR obligations with respect to the obligation to provide service upon request. Under COLR requirements, an ILEC must provide service to a requesting customer in its franchised service area consistent with the terms of its tariff. Under ETC requirements, both ILEC ETCs and competitive ETCs must provide service upon reasonable request anywhere within the ETC designated area. The main difference between COLR and ETC requirements is the context under which they have arisen. COLR requirements are much older and attach to ILECs who enjoyed many decades of rate of return guarantees and exclusive franchises in exchange for serving the entire franchise territory. ETC obligations are much newer and attach to designated ETCs many of whom have not enjoyed decades of rate of return guarantees and exclusivity. ETCs agree to provide service upon reasonable request throughout their ETC designated areas. The ill-advised leap the ILECs are asking the Commission to make is to require competitive ETCs to build out and mirror the ILEC footprint as a condition to receiving USF funds. This is not contemplated in either federal or state law and should be rejected.

24) Should a company which is a reseller and who also leases network elements be required to have a certain percentage of customers served by the leasing of network elements to meet the "own facilities" requirement?

Sprint is a not a wireline ETC and does not take a position on this matter.

25) What percentage of wireless CETC support should go to new towers in unserved areas?

As discussed above and consistent with FCC guidelines and rules, no specific percentage of funding should be earmarked for constructing towers in unserved areas.

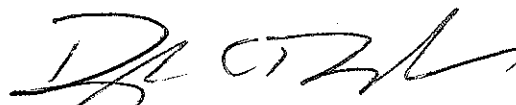
26) What other issues need to be addressed when considering ETC policy?

Sprint Nextel does not have any additional issues that it proposes be addressed, but the company does reserve its right to provide further comment in response to any additional issues raised by other commenting parties

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 31st day of August, 2007,



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