Date Mailed
September 30, 2003

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of NPCR, Inc., d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in Wisconsin — 8081-TI-101

FINAL DECISION

This is the final decision in this proceeding to determine whether to designate NPCR, Inc. (Nextel) as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive universal service fund (USF) monies.

Introduction

Nextel filed an application for ETC designation on April 24, 2003. The Commission issued a Notice of Investigation on June 27, 2003. The Commission issued a Notice Requesting Comments on September 12, 2003. A number of entities filed comments on September 18, 2003.[1] The Commission discussed this matter at its September 25, 2003 open meeting.

Nextel requested ETC designation for the exchanges shown in Appendix B. The territories for which ETC designation is requested are served by a mix of rural and non-rural telecommunications carriers.

[1] Citizens Utility Board ("CUB"); CenturyTel, Inc. and TDS Telecom Corporation; the Wisconsin State Telecommunications Association Small Company Committee (WSTA Small Company Committee); Wisconsin State Telecommunications Association ILEC Division (WSTA ILEC Division); Wisconsin State Telecommunications Association Wireless Division; Nsighttel Wireless (for seven applicants); Nextel and ALLTEL.

Findings of Fact

1. The wireless industry, its customary practices, its usual customer base, and Nextel's desire not to obtain state USF money create an unusual situation.

2. It is reasonable to adopt different ETC eligibility requirements and obligations for Nextel than specified by Wis. Admin. Code § PSC 160.13.

3. It is reasonable to require Nextel to meet only the federal requirements for ETC status in order to be eligible for ETC designation.

4. It is reasonable to relieve Nextel from ETC obligations other than those imposed under federal law.

5. It is reasonable to require that Nextel not apply for state USF funds and that if it ever does, all state requirements for and obligations of ETC status shall again be applicable to it.

6. Nextel meets the federal requirements for ETC designation.

7. It is in the public interest to designate Nextel as an ETC in certain areas served by rural telephone companies.

8. It is reasonable to grant Nextel ETC status in the non-rural wire centers indicated in its application, to the extent that the wire centers are located within the state.

9. It is reasonable to grant Nextel ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent such areas are located within the state.

10. It is reasonable to grant Nextel ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone company, to the extent the areas are located within the state, conditioned upon the Federal Communications Commission (FCC) approving the use of the smaller areas.

Conclusions of Law

The Commission has jurisdiction and authority under Wis. Stats. §§ 196.02, 196.218 and 196.395; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of the Telecommunications Act of 1996, to make the above Findings of Fact and to issue this Order.

The law does not require the Commission conduct a hearing in this docket as requested by the CUB; CenturyTel, Inc., and TDS Telecom Corporation; and the WSTA Small Company Committee and WSTA ILEC Division.

If "notice and opportunity for hearing" as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement.

Opinion

On December 20, 2002, the Commission granted the U.S. Cellular ETC status as applied for in Docket No. 8225-TI-102. *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 8225-TI-102, 2002 WL 32081608, (Wisconsin Public Service Commission, December 20, 2002). The instant application is substantively similar to the application of U.S. Cellular. The Commission reaffirms its decision in Docket No. 8225-TI-102 and relies on the opinion issued in the Final Decision in that docket, to approve Nextel's application.

ETC status was created by the FCC, and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, the state commissions are required to designate providers as ETCs. 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b). Designation as an ETC is required if a provider is to receive federal

universal service funding. ETC designation is also required to receive funding from some, but not all, state universal service programs.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a). The 1996 Telecommunications Act states that "States may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." 47 U.S.C § 254(f). A court upheld the states' right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999). While states must designate multiple ETCs if more than one provider meets the requirements and requests that status in a non-rural area, it must determine that it is in the public interest before designating more than one ETC in a rural area. 47 C.F.R. § 54.201. The Commission has already designated one ETC in each rural area.

In the year 2000, the Commission promulgated rules covering ETC designations and requirements in Wisconsin. Wis. Admin. Code § PSC 160.13. Those rules govern the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission. The application filed by Nextel asks that it be designated as an ETC for federal purposes only. It states that it is not seeking designation as an ETC for state purposes and, therefore, is not required to meet the additional state requirements.

States must examine the federal requirements, but are allowed to create additional requirements. Wisconsin has done so. The Commission's requirements for ETC designation clarify and expand upon the more basic FCC rules. There is no provision in the rule for designation as an ETC for federal purposes only. If a provider seeks to be designated as an ETC, it must follow the procedures and requirements in Wis. Admin. Code § PSC 160.13 and, if such

a designation is granted, that designation serves to qualify the provider for both state and federal universal service funding. However, Wis. Admin. Code § PSC 160.01(2)(b) provides that:

> Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

Nextel's request for ETC status presents an unusual situation. The wireless industry, its customary practices, and its usual customer base are quite different than those of wireline companies. Additionally, Nextel has stated that it has no desire to obtain state USF money. The Commission finds that under the particular circumstances of this case, it is reasonable to adopt different ETC requirements for Nextel to meet, and to grant ETC status to Nextel with certain limitations.

Because Nextel only wishes to obtain federal USF support, the Commission shall adopt the federal requirements for ETC status as the requirements that Nextel must meet to obtain ETC status. The federal requirements are found in 47 U.S.C. § 214(e)(1) and 47 C.F.R. §§ 54.101(a), 54.405 and 54.411. Further, the Commission relieves Nextel from ETC obligations other than those imposed under federal law. However, since Nextel will not be subject to the state requirements and state obligations, the Commission requires that Nextel not apply for state USF money. If Nextel ever does apply for state USF money, then all of the state requirements for and obligations of ETC status shall again be applicable to Nextel.

The Commission finds that Nextel has met the requirements for ETC designation; it will offer supported service to all customers in its designation areas and will advertise these services. In the FCC Declaratory Ruling *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public*

Utilities Commission, FCC 00-248 (released 8/10/00), par. 24 (South Dakota Decision) the FCC has stated:

> A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.

If this is sufficient for a new entrant, it would seem to be even more so for someone who has already started to serve portions of the exchanges. Nextel submitted an affidavit ensuring compliance and, as mentioned earlier, is not only providing service in other areas of the state but also in parts of the areas for which it has requested ETC status.

The Commission finds that Nextel meets the requirement to offer service to all requesting customers. It has stated in its application and comments that it will do so. Many filing comments argue that the applicant will not provide service to all customers in the indicated exchanges and thus, because of the issue of "cellular shadows," the applicant will not meet the same standard that is applied to wireline providers. However, this is a case where "the devil is in the details." It is true that the purpose of universal service programs is to ensure that customers who might not otherwise be served at affordable rates by a competitive market still receive service. However, like for wireline companies, access to high cost assistance is what helps ensure that service is provided. For Nextel, access to high cost assistance is exactly what will make expanding service to customers requesting service in the areas for which it is designated as an ETC "commercially reasonable" or "economically feasible." As the FCC has said:

> 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. South Dakota Decision, par. 17.

Nextel, like wireline ETCs, must fulfill this mandate, and access to high cost funding is what will help make doing so possible. The issue of "dead spots" is not significantly different from a wireline ETC that does not have its own lines in a portion of an exchange, perhaps a newly developed area. After obtaining a reasonable request for service, the wireline is required to find a way to offer service, either through extending its own facilities or other options. So too, Nextel must be given a reasonable opportunity to provide service to requesting customers, whether through expansion of its own facilities or some other method.

Nextel has also stated in its affidavit, application, and comments that it will advertise the designated services as required under 47 U.S.C. § 214(e)(1)(B), including the availability of low income programs.

Other objections to Nextel's designation focus on an alleged inability to meet certain additional state requirements in Wis. Admin. Code § PSC 160.13. These are moot, however, since the Commission has adopted different requirements for Nextel.

Some of the exchanges for which Nextel seeks ETC status are served by non-rural ILECs (SBC or Verizon). Under Wis. Admin. Code § PSC 160.13(3) and 47 U.S.C. § 251(e)(2), the Commission must designate multiple ETCs in areas served by such non-rural companies. However, the Commission may only designate multiple ETCs in an area served by a rural company if designating more than one ETC is in the public interest. Some of the exchanges for which Nextel seeks ETC status are served by rural telephone companies.

The Commission finds that designating Nextel as an additional ETC in these areas is in the public interest. In its determination, the Commission is guided by the Wis. Stat. §196.03(6) factors to consider when making a public interest determination:

(a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.
(b) Promotion of consumer choice.
(c) Impact on the quality of life for the public, including privacy considerations.
(d) Promotion of universal service.
(e) Promotion of economic development, including telecommunications infrastructure deployment.
(f) Promotion of efficiency and productivity.
(g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

The Commission finds that designating Nextel as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice. While it is true that Nextel is currently serving in at least some of these areas, the availability of high cost support for infrastructure deployment will allow Nextel to expand its availability in these areas. Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin. As a result, the Commission finds that it is in the public interest to designate Nextel as an ETC in the areas served by rural telephone companies for which it has requested such designation.[2]

The areas for which Nextel is granted ETC status vary. Wis. Admin. Code § PSC 160.13(2) states that the areas in which a provider shall be designated as an ETC depend on the

[2] Eighteen other state commissions and the FCC have approved wireless ETC applications as second ETCs in rural areas on similar grounds.

nature of the ILEC serving that area. If the ILEC is a non-rural telephone company, the designation area is the ILEC's wire center. The FCC has urged states not to require that competitive ETCs be required to offer service in the entire territory of large ILECs. It has found that such a requirement could be a barrier to entry. *Report and Order in the Matter of Federal-State Joint Board on Universal Service*, FCC 97-157 (released 5/8/97) pars. 176-177 (First Report and Order). Wisconsin's rule provision resolves this federal concern. As a result, Nextel is granted ETC status in the SBC and Verizon wire centers for which it requested such status, to the extent that such wire centers are located within the state.

Wis. Admin. Code § PSC 160.13(2) provides that if the ILEC is a rural telephone company, the ETC designation area is different. For an area served by a rural telephone company, the designation area is generally the entire territory (study area) of that rural company. A smaller designation area is prohibited unless the Commission designates and the FCC approves a smaller area. 47 C.F.R. § 54.207(b). Nextel's application contained a list of rural telephone company areas for which it requested ETC status. Attachment B, prepared by the Commission, show the rural areas for which it believes Nextel is seeking ETC status. If this list is not accurate, Nextel is ordered to submit to the Commission a revised list, in the same format as the attachment to this order, by October 31, 2003.

The Commission also grants ETC status to Nextel in the areas for which it is seeking designation for the entire territory of a rural telephone company, to the extent that such exchanges are located within the state. Finally, where Nextel is asking for ETC designation in some, but not all, parts of the territory of a rural telephone company, the Commission conditionally grants ETC status in the areas for which Nextel has requested such designation, to the extent that such exchanges are located within the state. However, Nextel must apply to the

FCC for approval of the use of a smaller area in such a designation. 47 C.F.R. § 54.207(c)(1). If the FCC approves use of the smaller area, then Nextel's ETC status for the smaller area(s) becomes effective. If the FCC does not approve use of the smaller area(s), then Nextel's conditional ETC status for such an area is void. In such a case, if Nextel determines that it then wants to apply for ETC status in the entire territory of the rural company, it may submit a new application requesting such designation.

The Commission grants this conditional status after having considered the changing market and the reason why the limitations on ETC designation in rural areas was created. Originally, there were concerns about "cherry picking" or "cream skimming." At that time, the USF support was averaged across all lines served by a provider within its study area. The per line support was the same throughout the study area. The concern was that competitive companies might ask for ETC designation in the parts of a rural company's territory that cost less to serve. It could thereby receive the averaged federal high-cost assistance while only serving the low-cost areas of the territory, while the ILEC received federal high-cost assistance but had to serve the entire territory, including the high-cost areas. First Report and Order, par. 189. As a result, the FCC found that unless otherwise approved by both the state and the FCC, a competitor seeking ETC status in the territory of a rural company must commit to serving the entire territory. First Report and Order, par. 189.

However, since that time, the USF funding mechanisms have changed. Currently, a competitive ETC gets the same amount of federal high-cost assistance per line as the ILEC. An ILEC has the option to target the federal high-cost assistance it receives so that it receives more USF money per line in the parts of the territory where it costs more to provide service, and less federal USF money in the parts of the territory where it costs less to provide service. *In the*

Matter of Multi-Association Group (MAG) Plan, FCC 01-157 (released 5/23/01), par. 147. (MAG Order) Since the competitive ETC receives the same per line amount as the ILEC, if it chooses to only serve the lower cost parts of the territory, then it receives only the lower amount of federal USF money. As a result, as recognized by the FCC, the concerns about "cherry picking" and "cream skimming" are largely moot. *In the Matter of Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (released 10/16/01), par. 12.

In the MAG Order, rural telephone companies were given the opportunity to choose a disaggregation and targeting method or to not disaggregate and target USF support. MAG Order, pars. 147-154. Companies were allowed to choose one of three targeting paths. Some of the companies in whose territory Nextel is seeking ETC designation chose Path One (no targeting) and some chose Path Three (targeting). If a competitive ETC is named in all, or part, of the service territory of a rural company, that company may ask the Commission to allow it to choose another Path. The FCC believed that state involvement in path changes gave competitors some certainty as to the amount of per line support available while preventing a rural company from choosing or moving to a different path for anti-competitive reasons. MAG Order, par. 153. Some of the companies in whose territory Nextel is seeking ETC designation have disaggregated and targeted USF support, and some have not. However, the Commission may allow a company to change paths when a competitive ETC is designated in a rural company's territory.

Requests for Hearing

In accordance with the Notice Requesting Comments, dated September 12, 2003, the Commission received eight filings, four of which requested, on various grounds, the Commission conduct a contested case hearing before deliberation of the application. CenturyTel, Inc. and

TDS Telecom Corporation claimed a right to a hearing under Wis. Admin. Code § PSC 160.13(3) and Wis. Stat. § 227.42. WSTA Small Company Committee and WSTA ILEC Division also suggested that the Commission should hold a contested case hearing. Citizens Utility Board (CUB) also claimed a right to a hearing under Wis. Stat. § 227.42. The law, however, does not require the Commission conduct a hearing in this docket as requested. Furthermore, if "notice and opportunity for hearing" as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement.

CenturyTel, Inc. and TDS Telecom Corporation claimed a right to a hearing under Wis. Admin. Code § PSC 160.13(3) and Wis. Stat. § 227.42.

Wis. Admin. Code § PSC 160.13 (3) states:

> For an area served by an incumbent local exchange service provider that is a rural telephone company, the commission may only designate an additional eligible telecommunications carrier after finding that the public interest requires multiple eligible telecommunications carriers, pursuant to federal law and s. 196.50 (2), Stats. For an area served by an incumbent local exchange service provider that is not a rural telephone company, the commission may designate an additional eligible telecommunications carrier without making such a finding.

Wis. Stat. § 196.50(2), designates the process to certify a telecommunications utility. Wis. Stat. § 196.50(2), states in part, ". . . after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area." According to the rule and statute it would appear that notice and opportunity for hearing is a required procedure in the instant case.

Wis. Stat. § 196.50(2), however, does not apply to an application for ETC status of a wireless company to be an additional ETC in a rural area. Wis. Stat. § 196.202,[3] expressly restricts Commission jurisdiction over wireless providers. This statute prevents the Commission from applying almost every provision of Wis. ch. 196, to wireless providers, except for Wis. Stat. § 196.218(3).[4] This section only applies if, "the commission promulgates rules that designate [cellular] providers as eligible to receive universal service funding under both the federal and state universal service fund programs." Wis. Stat. § 196.218(3), mandates telecommunications providers contribute to the Wisconsin Universal Service Fund (WUSF). (Wireless providers currently have been exempted.) This section, however, is wholly unrelated to the requirements for eligibility to receive money from the WUSF and, otherwise, unrelated to this case.[5]

The Commission cannot apply Wis. Stat. § 196.50(2), to wireless providers. The Commission, therefore, cannot proceed under Wis. Stat. § 196.50(2)(f), when evaluating the

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[3] Wis. Stat. § 196.202, states:

> **Exemption of commercial mobile radio service providers. (2) Scope of regulation.** A commercial mobile radio service provider is not subject to ch. 201 or this chapter, except as provided in sub. (5), and except that a commercial mobile radio service provider is subject to s. 196.218 (3) if the commission promulgates rules that designate commercial mobile radio service providers as eligible to receive universal service funding under both the federal and state universal service fund programs. If the commission promulgates such rules, a commercial mobile radio service provider shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund.
> **(5) Billing.** A commercial mobile radio service provider may not charge a customer for an incomplete call.

[4] Wis. Stat. § 196.218 (3), states, in part:

> **Contributions to the fund.** (a) 1. Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund beginning on January 1, 1996. determined by the commission under par. (a) 4.

[5] Like the Legislature, Congress has also limited the state role in regulating on wireless carriers. 47 U.S.C. § 332(c)(3); ***Bastien v. AT&T Wireless Services, Inc.,*** 205 F.3d 983 (7th Cir. 2000).

ETC application of a wireless provider. As a matter of law, the reference to Wis. Stat. § 196.50(2)(b)(f), in Wis. Admin Code § PSC 160.13, cannot apply to ETC applications of wireless providers, including Nextel.

Wis. Stat § 227.42 provides a right to a hearing, treated as a contested case, to any person filing a written request for a hearing with an agency who meets the following four part test:

> (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
>
> (b) There is no evidence of legislative intent that the interest is not to be protected;
>
> (c) The injury to the person requesting a hearing is different in kind or degree from injury to the public caused by the agency action or inaction; and
>
> (d) There is a dispute of material fact.

CenturyTel, Inc. and TDS Telecom Corporation own local exchange telephone companies that provide essential telecommunications service as ETCs in the rural areas at issue. These companies are competitors of Nextel. On this basis, these companies claim they have a substantial interest protected by law, and will suffer special injury based on the ETC designation of Nextel. Federal law and state law, however, do not create a substantial, or property, interest in exclusive ETC status for incumbent rural ETCs. *Alenco Communications v. FCC*, 201 F.3d 608 (2000) ("The purpose of universal service is to benefit the customer, not the carrier."); *WITA v. WUTA*, 65 P.3d 319 (2003); *"In re Application of GCC License Corp.*, 647 N.W.2d 45, 52, 264 Neb. 167, 177 (2002)." ("[r]ather, customers' interest, not competitors', should control agencies' decisions affecting universal service" and that "[t]he Telecommunications Act does not mention protecting the private interests of incumbent rural carriers, who are often exclusive ETCs simply by default as the sole service provider operating in a

particular area.") *See also, State ex rel. 1st Nat. Bank v. M&I Peoples Bank,* 95 Wis. 2d 303, 311 (1980). (Economic injury as the result of lawful competition does not confer standing.); *MCI Telecommunications v. Pub. Serv. Comm.*, 164 Wis. 2d 489, 496, 476 N.W.2d 575 (Ct. App. 1991); and *Wisconsin Power & Light v. PSC,* 45 Wis. 2d 253 (1969) (". . . the predominant purpose underlying the public utilities law is the protection of the consuming public rather than the competing utilities.")

In addition, these companies also claim that granting Nextel ETC status will reduce the amount of USF funds available to the public. As explained above, such result does not injure companies' protected interest. As explained below, increasing the number of carriers eligible for federal USF money will increase the amount of federal USF dollars brought into Wisconsin. Moreover, companies' claim is entirely speculative.

WSTA Small Company Committee and WSTA ILEC Division also suggested that the Commission should hold a contested case hearing. These organizations represent local exchange telephone companies that provide essential telecommunications service as ETCs in the rural areas at issue who are competitors of Nextel. These comments suggest the Commission hold a contested case hearing. These organizations, however, did not invoke Wis. Stat. § 227.42 or attempt to apply the standards therein. Had these organizations claimed such a right to a hearing under Wis. Stat. § 227.42, the same analysis would apply to them as described for the CenturyTel, Inc. and TDS Telecom Corporation claim.

CUB also claims a right to a hearing under Wis. Stat. § 227.42. CUB further requests that the Commission consolidate ten pending ETC applications of wireless providers into one contested case for investigation of common issues.

CUB asserts it has a substantial interest protected by law, and will suffer special injury based on the ETC designation of Nextel because it claims to represent customers in the geographic area in which the applicant seeks ETC designation. As customers of the current ETC in that area, and as payees into the universal service fund, its members have a substantial interest that fund money is not wasted through certification of an inappropriate carrier. The federal USF, however, provides a benefit to customers through the assistance of carriers who commit to providing service in high-cost areas. The designation of more than one ETC in a particular high-cost area allows more carriers providing service in rural Wisconsin, such as Nextel, to tap into money collected on a nation-wide basis so that more services and more provider choices can be afforded to these customers. As such, far from threatening their substantial interests, ETC designation, like the instant one, necessarily provides a benefit to customers. On this basis, a hearing was not required by CUB's request.

CUB asserted that it meets the standards of Wis. Stat. § 227.42(1)(d), because it disputes the factual assertions made by the applicant that allowing it to receive ETC status will further the public interest by bringing the benefits of competition to underserved marketplaces and that the application provides the Commission with enough information regarding what services will be offered and at what cost to support it claims ETC designation is in the public interest. These assertions amount to a generalized challenge regarding the sufficiency of Nextel's application. A hearing, however, is not required on such basis. Wis. Stat. § 227.42(1), contemplates that a requester provide some showing that it meets the four part test. CUB fails to present any

facts that either contradict the assertions of the applicant or demonstrate that any of CUB's alleged deficiencies in the application are fact-based and material.

All filers requesting a hearing state or allude to the cumulative effect of granting the ten pending wireless ETC applications as an appropriate issue in this docket. The Commission, however, has not consolidated these applications into one case. The ETC designation process is based on the application of an individual carrier to the standards Wis. Admin. Code § PSC 160.13. Issues regarding the cumulative impact of this decision, and decisions like it, are not before the Commission.

The law does not require the Commission conduct a hearing in this docket. If "notice and opportunity for hearing" as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated September 12, 2003, satisfies this requirement. *Waste Management of Wisconsin v. DNR*, 128 Wis. 2d 59, 78, 381 N.W.2d 318 (1985). (An appropriate "opportunity for hearing" may be exclusively through written comments.)

Order

1. Nextel is granted ETC status in the non-rural wire centers indicated in its application, to the extent the wire centers are located within the state.

2. Nextel is granted ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent the areas are located within the state.

3. Nextel is granted ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone company, to the extent

the areas are located within the state, conditioned upon the FCC approving the use of the smaller areas.

4. Nextel shall file a revised list of rural areas for which it is seeking ETC status by October 31, 2003, if the list attached to this order is inaccurate. The revised list shall use the same format as the attachment.

5. Nextel must request that the FCC approve the use of an area smaller than the entire territory of certain rural telephone companies (listed in an attachment to this order) when granting ETC status in those areas.

6. If the FCC does not approve the use of areas smaller than the entire territory of a rural telephone company when granting ETC status in those areas, then the conditional grant of ETC status in this order is void.

7. Nextel shall not apply for state USF support. If it ever does file for such support, the state eligibility requirements for, and obligations of ETC status, shall immediately apply to it.

8. Based on the affidavit of Donald J. Manning, Vice President and General Councel, Nextel is an ETC within the meaning of 47 U.S.C. § 214 (c) and is eligible to receive funding pursuant to 47 U.S.C. § 254 (2). This order constitutes the certification to this effect by the Commission.

9. The requests for a contested case hearing by CenturyTel, Inc., TDS Telecom Corp., CUB, WTSA Small Company Committee, and WSTA ILEC Division are rejected.

10. Jurisdiction is maintained.

Dated at Madison, Wisconsin, _____

By the Commission:

_____

Lynda L. Dorr
Secretary to the Commission

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A

This proceeding is not a contested case under Wis. Stat. Ch. 227, therefore there are no parties to be listed or certified under Wis. Stat. § 227.47. However, an investigation was conducted and the persons listed below participated.

PUBLIC SERVICE COMMISSION
OF WISCONSIN
(Not a party, but must be served)
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APPENDIX B

Rural Operating Companies for which Nextel requests ETC certification for the entire service territory:

Amherst Tel. Co.
Badger Telecom, Inc.
Bayland Tel. Co.
Belmont Tel. Co.
Bloomer Tel. Co.
Bonduel Tel. Co.
Bruce Tel. Co., Inc.
Chibardun Tel. Co-op.
Citizens Tel Co-op. - Wis.
Cochrane Tel. Co-op.
Cuba City Exchange Tel. Co.
Dickeyville Tel. Co.
CenturyTel of the Midwest – Kendall
CenturyTel of Wisconsin – Fairwater-Brandon-Alto
CenturyTel of Wisconsin – Forestville
CenturyTel of Wisconsin – Larsen-Readfield
CenturyTel of Monroe County, LLC
EastCoast Telecom, Inc.
Farmers Independent Tel. Co.
Farmers Tel. Co. of Wis.
Frontier Communications – Mondovi
Fronntier Communications – Viroqua
Frontier Communications – Wisconsin, Inc.
Grantland Telecom, Inc.
Hillsboro Tel. Co.
Indianhead Tel. Co.
Lakefield Tel. Co.
Lemonweir Valley Tel. Co.
Manawa Tel. Co.
Marquette-Adams Tel. Co-op.
Mosinee Tel. Co.
Nelson Tel. Co-op.
Northeast Tel. Co.
Siren Tel. Co., Inc.
Stockbridge & Sherwood Tel. Co.
Telephone USA of Wisconsin, LLC
Tenney Tel. Co.
Tri-County Tel. Co-op.
Union Tel. Co.
Vernon Tel. Co-op.
Waunakee Tel. Co.
West Wisconsin Tel. Co-op.
Wittenberg Tel. Co.
Wood County Tel. Co.

Rural Operating Companies for which Nextel requests ETC certification for individual exchanges, but not the whole service territory:

CenturyTel of the Midwest – Wisconsin	Casco Coleman Freemont Goodman Harmony	Platteville Shell Lake Thorp Wayside Weyauwega
CenturyTel of the Midwest – WI / Northwest	Boyd Cadott Chetek De Forest Poynette	Ripon Tomah Warrens Wild Rose
Scandinavia Tel. Co.	Iola	
CenturyTel of Northwest Wisconsin, LLC	Lake Nebagamon	
CenturyTel of Northern Wisconsin, LLC	Gilman Holcombe Jim Falls	
CenturyTel of Central Wis.	Alma Center Arcadia Augusta Bangor Black Creek Black River Falls Centerville Cleghorn Denmark Fairchild Fall Creek Fountain City Galesville	Holmen Luxemburg Merrilan Mindoro New Franken Osseo Pickett Rosendale Seymour Shicoton Trempelaeu Wautoma