

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Case 05-C-0616

(Proceeding on Motion of the Commission to Examine  
(Issues Related to the Transition to Intermodal Competition  
(in the Provision of Telecommunication Services

**COMMENTS OF NEXTEL PARTNERS OF UPSTATE NEW YORK, INC.**

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## INTRODUCTION

Nextel Partners of Upstate New York, Inc. (“Nextel Partners”) is a wireless carrier<sup>1</sup> that provides wireless telecommunications service in upstate New York<sup>2</sup>. Nextel Partners provides these comments in response to the June 29, 2005 Order Initiating Proceeding and Inviting Comments in this docket. Nextel Partners appreciates the Commission’s interest in the wireless telecommunications industry and hopes to work with the Commission and its staff for the best solutions for New York.

These comments first address generally the Consumer Protections issues set forth in the June 29, 2005 Order in this Case and then specifically address each of the Consumer Protections issues. The balance of the comments address the issues set forth in the Order topically, but not by specifically enumerated issue.

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<sup>1</sup> Nextel Partners provides a unique combination of two-way digital mobile telephone, text messaging, alpha-numeric paging and one-to-one and one-to-many dispatch service (Direct Connect<sup>SM</sup>) using a single integrated handset. Such services are provided in upstate New York and other jurisdictions through the use of Nextel Partners’ facilities and through interconnection with the public telephone network. Nextel Partners provides these services through special mobilized radio (“SMR”) licenses issued by the Federal Communications Commission (“FCC”) under Part 90 of its rules (47 C.F.R. § 90). SMR service is one type of commercial mobile radio service (“CMRS”) as that term is defined in 47 U.S.C. § 332(d)(1) and 47 C.F.R. § 20.3.

<sup>2</sup> Nextel Partners provides Nextel branded wireless service in upstate New York and other jurisdictions. Nextel branded service in metropolitan New York City is provided by a different company - Nextel of New York, Inc., which is a subsidiary of Nextel Communications, Inc. of Reston, VA.

## SUMMARY OF COMMENTS

The wireless telecommunications industry is highly competitive.<sup>3</sup> Wireless carriers compete on price, service quality and terms and conditions of service. This competition has resulted in the drop in per minute prices of 81% in the last decade -- from 44 cents in 1994 to under 10 cents in 2004.<sup>4</sup> This price drop has been accompanied by continuous improvements in service and more consumer friendly terms and conditions of service.<sup>5</sup>

Competitive industries, like the wireless industry, should not be subject to public utility-type regulation that is designed to address monopoly or near-monopoly situations. Instead, state consumer protection laws address and should continue to address consumer protection in such industries. These laws, the competitive forces in the marketplace and a code of conduct adopted on a nationwide basis provide the best protections for wireless customers without stifling the innovation and competition in the wireless industry.

The fact that in some areas wireless carriers compete with landline carriers does not mean New York needs or would benefit from regulation of wireless carriers. Oil, propane and wood - - all competitive industries and unregulated by the PSC - - compete for space heating with regulated gas and electric utilities. Similarly, utility style regulation of competitive wireless carriers that compete not just among themselves but with other modes of telecommunications is neither necessary nor appropriate.

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<sup>3</sup> *I/M/O Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service*, FCC WT Docket No. 04-111, *Ninth Report* (released September 28, 2004) (the "FCC Competition Report")

<sup>4</sup> Letter from the FCC Wireless Bureau Chief published in *The Wall Street Journal*, February 16, 2005 (attached).

<sup>5</sup> *Id.*

For these reasons, Nextel Partners urges the Commission to embrace the New York and national policies fostering competition and innovation in the wireless industry and refrain from adopting a regulatory approach to wireless. Nextel Partners also urges the Commission to rely on federal universal service funding and policies and federal number resources administration rather than implementing additional state specific initiatives in those areas.

## **I. CONSUMER PROTECTION**

### **A. OVERVIEW OF WIRELESS CONSUMER PROTECTION**

#### **1. The Wireless Industry is Built on a Competitive Model**

The wireless industry was from its inception built on a competitive market place model. In 1975, the Federal Communications Commission (“FCC”) first allocated radio wave spectrum to “cellular” service and, in 1981, decided that cellular service would be competitively provided by licensing two facilities based carriers in each market<sup>6</sup>. In 1983, the first commercial application of service began.

In the period 1995 to 1997, the FCC issued Personal Communications Services (“PCS”) licenses, which expanded the number of wireless service providers.<sup>7</sup> In addition, during the mid-1990's other carriers began utilizing Specialized Mobile Radio (“SMR”) licenses to provide wireless telephone service.<sup>8</sup> The FCC’s licensing and the related spectrum allocation decisions have created today’s highly competitive, multi-carrier, multi-license wireless industry.

To facilitate the continued development of a competitive wireless industry and in recognition of its multi-state nature, in 1993, Congress enacted legislation that preempts state authority to regulate the “entry of or rates charged by” providers of “commercial mobile service”

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<sup>6</sup> *I/M/O Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Ave of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report*, 10 FCC Rcd 8844, ¶14 and notes 18-20 (released August 18, 1995).

<sup>7</sup> *I/M/O Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Avenue of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service, Second Report* (released March 27, 1997) pp. 19-20.

<sup>8</sup> Nextel Partners utilizes SMR licenses to provide service.

(commonly termed “CMRS”). 47 U.S.C. § 332(c)(3)(A).<sup>9</sup> This law eliminates any state utility commission regulation of wireless entry or rates and is consistent with and supports a nationally - oriented competitive model for the wireless industry.

New York’s policy toward wireless has also followed a competitive model by rejecting regulation of wireless service. In 1984, the Commission’s jurisdiction was amended to exclude wireless except for “cellular” carriers.<sup>10</sup> In 1999, the Pataki administration proposed a Governor’s program bill to deregulate cellular carriers, which the Legislature enacted - - thereby completing New York’s statutory deregulation of wireless service.<sup>11</sup>

In 2003 and 2004, the wireless industry cooperated with the Commission’s investigation of the blackout of August 2003 and the Network Reliability inquiry.<sup>12</sup> In the staff memo attached to the Commission Network Reliability order of July 28, 2004,<sup>13</sup> the staff indicated it did not support regulation of wireless. The Commission also noted its lack of authority over wireless on July 11, 2005.<sup>14</sup>

## **2. Wireless Competition and Its Benefits are Well Documented**

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<sup>9</sup> The law defines “commercial mobile service” at 47 U.S.C. § 332(d)(1). Nextel Partners is a provider of “commercial mobile radio.”

<sup>10</sup> Public Service Law §5(3). The Commission notes this exclusion in *Re: Sithe/Independence Power Partners*, Case No. 94-E-0136 (March 16, 1995).

<sup>11</sup> Public Service Law §5(6).

<sup>12</sup> *Initial Report by the New York Department of Public Service on the August 14, 2003 Blackout*, page 82, note 34 (dated February 2004, released March 1, 2004); *Proceeding on Motion of the Commission to Examine Telephone Network Reliability*, Case 03-C-0922, *Order Concerning Network Reliability Enhancements* (July 28, 2004).

<sup>13</sup> *Id.*, attachment page 27.

<sup>14</sup> Case 04-C-0947, *Petition of the Town North Hempstead Concerning Unblocking Caller ID Information for Calls to the 311 Municipal Call Center*, p. 6 (July 11, 2005).

The wireless industry is highly competitive. The FCC issues an annual report on the status of competition in the wireless industry pursuant to 47 U.S.C. §332 (c)(1)(C). The FCC issued its ninth such report in September 2005. *I/M/O Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service*, FCC WT Docket No. 04-411, Ninth Report (release September 28, 2004) (the “FCC Competition Report”). The Executive Summary of that report states:

[T]he Commission concludes that there is effective competitive in the CMRS marketplace. Among the indicators of market structure that form the basis for this conclusion, we note that 97 percent of the total U.S. population lives in counties with access to three or more different operators offering mobile telephone service, up from 95 percent in the previous year, and up from 88% in 2000, the first year for which these statistics were kept. In addition, there were somewhat larger increases in the percentage of the U.S. population living in counties with access to 4 or more, 5 or more, 6 or more, and 7 or more different mobile telephone operators in the past year. These increases indicate that competition is robust in terms of the current number of competitors per market, and also that spectrum availability and other key determinants of entry conditions are favorable to continued competitive entry at the local level.<sup>15</sup>

The report further finds that:

To date, 276 million people, or 97 percent of the total U.S. population, live in counties with access to three or more different operators (cellular, broadband PCS, and/or digital SMR providers) offering mobile telephone service, a slight increase from what the Commission found in the *Eighth Report*. Almost 250 million people, or 88 percent of the U.S. population, live in counties with five or more mobile telephone operators competing to offer service. Mobile telephone carriers continued to upgrade their networks with next generation technologies that allow them to offer mobile data services at higher data transfer speeds. To date, operators are offering services over these next generation networks in at least some portion of U.S. counties containing 279 million people, or 98 percent of the U.S. population.<sup>16</sup>

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<sup>15</sup> FCC Competition Report, at ¶2.

<sup>16</sup> See e.g., FCC Competition Report, at ¶21.

The maps<sup>17</sup> that accompany the FCC Competition Report indicate that there is more than one carrier in every county of New York and multiple carriers in much of the State. Thus, New York enjoys the benefits of robust consumer choice in wireless services.

### **3. Wireless Number Portability and Cost of Customer Acquisition Enhance Customer Treatment**

The implementation of wireless local number portability (“WNP”) has further enhanced the competitive nature of and consumer choice in the wireless industry. Due to WNP, consumers are now able to keep their telephone numbers when they switch wireless carriers, while landline users can also transfer their telephone numbers to wireless carriers if they choose (and vice versa). The initial implementation of WNP in November, 2003 covered the top 100 metropolitan statistical areas. WNP was implemented in the rest of the country as of May 2004.

Customer freedom to switch has served to intensify the competitive landscape. It puts consumers in the driver’s seat more than ever before. As the FCC Competition Report states, “LNP<sup>18</sup> has indeed increased competitive pressures on CMRS carriers with respect to existing customers, with the result that such customers are *receiving improved service.*” FCC Competition Report, at ¶166. (italics added)

In addition, customer acquisition costs for the wireless industry are substantial -- averaging \$300 to \$350 per subscriber.<sup>19</sup> The three primary components of these costs are handset subsidy, marketing and advertising, and sales commission. The costs of customer

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<sup>17</sup> FCC Competition Report, Map 1.

<sup>18</sup> LNP, or “local number portability” is the more general term for switching carriers while maintaining the customer’s same telephone number.

<sup>19</sup> J. D. Powers and Associates has developed this estimate.

acquisition create a very large incentive for wireless carriers to serve their customers well in order to keep them.

#### **4. Consumer Code for Wireless Service and Settlement Agreements Add to Customer Protection with National Standards**

In September 2003, the wireless industry trade association, CTIA,<sup>20</sup> issued a Consumer Code for Wireless Service (the “Code”)<sup>21</sup>. The industry issued the Code to address consumer needs in the competitive marketplace. The policies and standards of performance contained in the Code are consistent with making competition the driver to provide the best possible service to consumers. The Code is designed to be achievable and workable within the nationwide design of wireless networks and for the multi-state nature of the delivery of wireless services. All wireless carriers providing nationwide service and many of the smaller, regional carriers meet or exceed the performance standards contained in the Code and have integrated them into their respective terms and conditions of service upon which they compete for customers.<sup>22</sup>

The Code contains ten standards, summarized as follows:

1. For every rate plan or contract, consumers will be given specific disclosures regarding rates and terms of the service.<sup>23</sup>

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<sup>20</sup> CTIA is the Cellular Telecommunications and Internet Association.

<sup>21</sup> The Code is available at: [http://files.ctia.org/The\\_Code.pdf](http://files.ctia.org/The_Code.pdf)

<sup>22</sup> Nextel Partners is not a member of the CTIA but has committed to comply with the Code.

<sup>23</sup> Provision number one of the Code requires the following disclosures: For each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web site, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no

2. Coverage maps will be provided, illustrating where service is generally available.
3. When initiating or changing service, carriers will clearly state contract terms to customer and confirm changes in service.
4. Each service plan will provide every new consumer a minimum 14-day trial period for new service during which they can terminate service with no early termination fee.
5. In every advertisement that mentions pricing, rates and terms of service will be specifically disclosed.
6. On billing statements, carriers will separately identify carrier cost recovery charges from taxes.
7. Customers will be provided with the right to terminate service for significant changes to contract terms.
8. Ready access to customer service will be provided.
9. Consumer inquiries and complaints received from government agencies will be responded to promptly.
10. Each company will agree to abide by policies for the protection of customer privacy.

To date, consumer experience with the Code has been positive.

In addition to the Code, pursuant to state consumer protection law (discussed below), Cingular Wireless, Verizon Wireless and Sprint have signed settlement agreements known as Assurance of Voluntary Compliance (“AVCs”) with 33 state Attorneys General.<sup>24</sup> These agreements follow the requirements of the Code, with some carrier specific deviations, and are enforceable in court by the respective Attorneys General should a carrier that has an AVC not be in compliance with its AVC. To date, compliance with the Code and AVCs has been excellent

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early termination fee will apply.

<sup>24</sup> The AVCs are available at the National Association of State Utility Consumer Advocates NASUCA website: <http://www.nasuca.org/AVC%20Documents.htm>. Nextel Partners is not a party to an AVC.

in that there have been no known actions related to any alleged non-compliance by a carrier. New York's Attorney General has chosen not to join into the AVCs. However, state legal actions and remedies such as those represented by AVCs remain available under New York's consumer protection laws, which are discussed below.

#### **5. New York's Consumer Protection Laws are Actively Applied to Wireless Services**

New York State, like other states, has consumer protection laws to deal with consumer fraud, misleading advertising, and other deceptive practices. For example, General Business Law § 349 makes deceptive acts and practices unlawful and General Business Law §350 makes false advising unlawful. Penalties for violation of these provisions include actual damages, treble damages limited to \$1,000 total, civil penalties of \$500 per violation and enhanced penalties for certain actions involving elderly persons. General Business Law §§ 349, 349-c, and 350-d.

The state consumer protection statutes are not exclusive. For example, New York City has its own consumer protection law overseen and enforced by its Department of Consumer Affairs. On July 21, 2005 this NYC department brought actions under those laws against three wireless carriers -- Sprint, T-Mobile and Nextel Communications.<sup>25</sup> It also reports entering into settlements with Cingular Wireless and Verizon Wireless.<sup>26</sup>

New York State also has the Consumer Protection Board ("CPB"), which has the power to, among other things, coordinate state consumer protection activities and receive complaints.

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<sup>25</sup> Press Release, NYC Department of Consumer Affairs July 21, 2005. Available at: [http://www.nyc.gov/html/dca/html/pr\\_072105.html](http://www.nyc.gov/html/dca/html/pr_072105.html)

<sup>26</sup> *Id.*

Executive Law § 553. The CPB may also initiate and attempt to resolve consumer protection matters as well as refer such matters to the Attorney General's Office. *Id.*

In December 2003, the CPB presented testimony to the Senate Committee on Energy and Telecommunications regarding wireless phone service.<sup>27</sup> In that testimony, CPB stated that wireless phones account for appropriately 2% of the appropriately 20,000 complaints it receives per year. Of those wireless complaints, 10% concern the quality of wireless service “such as the inability to receive service at certain locations.” The balance of the complaints concern rate and billing issues. The CPB testimony also noted that the 73% of the complaints received by the FCC involve rate and billing issues.

The CPB testimony further reports that it has been “for the most part extremely successful in resolving wireless complaints regarding billing and rate issues” and obtains an outcome that is acceptable to both the consumer and service provider 85% of the time. CPB also noted that at the time of the testimony, the Code had just recently been issued. The foregoing regime of consumer protection laws provide substantial and effective state and consumer methods to remedy wireless service complaints. There is no need for New York to add another layer of complaint remediation through the Commission.

## **6. The FCC's Truth-in-Billing Rules Add to National Wireless Consumer Protections**

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<sup>27</sup> Testimony on CPB website at:  
[http://www.consumer.state.ny.us/pdf/wireless\\_testimony\\_12\\_8\\_03.pdf](http://www.consumer.state.ny.us/pdf/wireless_testimony_12_8_03.pdf)

This year, the FCC extended its truth-in-billing regulations to wireless carriers.<sup>28</sup> These regulations, at 47 C.F.R. § 64.2401(b), require that billing descriptions be “brief, clear, non-misleading and in plain language.”<sup>29</sup> The principles of those rules “promote truth-in-billing rather than mandate specific rules that would rigidly govern the details or format of carrier billing practices.”<sup>30</sup> The FCC further stated that :

The principles require: 1) that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers; 2) that bill contain full and non-misleading descriptions of charges that appear therein; and 3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquires about, or contest charges on the bill.<sup>31</sup>

The FCC truth-in-billing rules, which now extend to the wireless industry, along with the CTIA Code of Conduct and the AVCs apply on a national basis -- which is consistent with the current efficient regional and national delivery of wireless services.<sup>32</sup>

## **7. Regulation of Wireless Would Do More Harm Than Good**

Nextel Partners does not question the fact that sometimes wireless carriers compete with landline carriers. Nevertheless, New Yorkers would not be better served by a regulated wireless industry. Regulation would move resources from competing in all aspects of service and

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<sup>28</sup> *I/M/O Truth-in-Billing Format*, CC Docket No. 98-170, National Association of State Utility Consumer Advocates Petition for Declaratory Ruling Regarding Truth in Billing, CG Docket No. 04-208. SECOND REPORT AND ORDER, DECLARATORY ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING (Released March 18, 2005)

<sup>29</sup> *Id.*, at ¶ 2.

<sup>30</sup> *Id.*, at ¶ 4.

<sup>31</sup> *Id.*, at ¶ 5.

<sup>32</sup> In the FCC’s truth-in-billing order, the FCC also found state commission regulation of line items in wireless bills to be preempted by federal statute [47 U.S.C. § 332(c)(3)(A)] which prohibits states from addressing the rates of wireless carriers. *Id.*, at ¶ 30-36.

innovation to meeting the regulatory standards and requirements. Regulation is inappropriate to address a competitive market such as wireless.

In a somewhat similar situation, the Commission regulates distribution of electricity and natural gas, both of which compete in the space heating market with oil, propane and wood. We assume the Commission does not and would not consider regulating the oil, propane or wood distribution businesses, as they are competitive, provide customer choice, and are subject to the State's consumer protection laws. The same conclusion should apply to the wireless industry.

## **B. SPECIFIC CONSUMER PROTECTION QUESTIONS**

### **1. In view of the proliferation of competitive alternatives, is it appropriate for the Commission to relax some of its traditional consumer protections applicable to wireline companies?**

While our comments do not focus on landline service, consistent with the foregoing comments, for markets where there are competitive alternatives, it is appropriate to consider relaxation or elimination of regulation.

### **2. Are there core consumer protections (e.g., slamming, cramming, termination notices, contract disclosures) that should be enforced by the Commission, notwithstanding the existence of competitive choices? Should a set of core consumer protections apply to wireless and VOIP/cable telephony, as well as traditional wireline?**

With respect to the wireless industry, Nextel Partners answers both of these questions in the negative and reiterates that core consumer protections are already provided in the wireless industry.

First, basic consumer protections are provided by the Code, the AVCs, state consumer protection laws, the CPB and the FCC's truth-in-billing rules. The highly competitive nature of the wireless industry and costs to acquire a customer incent carriers to provide high quality

customer service, avoid customer complaints and promptly satisfy any such complaints. The standards in the Code address wireless industry consumer standards on a national basis. This approach is consistent with the multi-state and national delivery of the service, rate plans, contracts, etc. Failure to comply with the Code would likely result in actions under state consumer protection laws due to carrier commitments to the Code in advertising and contracts.

Imposition of Commission consumer protection regulation would raise the costs to provide the service at a detriment to customers inasmuch as no added benefits would be achieved. Additional costs and customer confusion would likely result from rate plans and contracts needing special state specific provisions. Even worse, some of the numerous plans and offerings might simply not be offered to New York consumers due to unique state requirements or regulation.

In sum, ample core consumer protections are provided by competition, the Code, the AVCs, and the newly extended FCC truth-in-billing rules. There is no justification for additional wireless state specific consumer protection regulation by the PSC.

**3. Does the Commission have a unique role to play in addressing consumer complaints? Should a common forum for the timely handling of consumer complaints be available under the auspices of the Commission? In other words, should the Commission's complaint handling function and the authority to enforce core consumer protections be extended to wireless and VOIP/cable telephony? If so, what should the nature and scope of that function be?**

As described in previous sections, strong core consumer protections are being provided in the wireless industry in New York from sources other than Commission regulation. The CPB receives and addresses wireless complaints and, as described above, reports a favorable resolution of 85% of those complaints. For this reason, we respectfully suggest the Commission does not and should not play a central role in receiving wireless complaints or providing wireless

dispute resolution. While we make no claims that the industry always handles all situations perfectly, the evidence demonstrates that the current complaint resolution processes for wireless are working. In sum, there is a lack of evidence showing a need to extend the Commission's regulation into wireless complaints or dispute resolution.

#### **4. What impact might municipally owned wire/wireless networks have?**

Nextel Partners does not support public sector entry into the competitive wireless industry. Any such public investment is likely to have the impact of chilling private investment in the wireless industry in geographic areas or states where it occurs. In light of the substantial private investment in wireless, Nextel Partners is unaware of any justification for government wireless networks.

## **II. UNIVERSAL SERVICE**

Large changes in the telecommunications industry have occurred since 1996. Among other things, the federal universal service program has continued to evolve and grow, and provides substantial, explicit subsidies to rural high cost service areas and to low income customers. New technologies, such as wireless, have invested to provide statewide service and provide communications alternatives. The evidence does not show that the federal subsidies are inadequate or support new state universal service initiatives.

According to the Universal Service Administrative Company, federal "High Cost" support in New York was \$51,306,000 in 2004 (unaudited), \$53,134,000 in 2003 and \$348,574,000 for the seven year period 1998-2004.<sup>33</sup> Low income support in New York was

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<sup>33</sup> Universal Service Administration Company, Annual Report for 2003 and Annual Report for 2004.

\$51,528,000 in 2004 (unaudited), \$53,616,000 in 2003, and \$314,166,000 for the seven year period 1997-2004.<sup>34</sup> In addition, federal universal service funds have been received related to the schools and libraries fund and rural health care components of the federal universal service program.

Since 1996, a variety of communications alternatives have spread across New York and the nation. The wireless industry reached 9.9 million wireless subscribers in New York in June 2004 - - all largely without the aid of public subsidies.<sup>35</sup> Other communication alternatives have also developed in the last decade, such as telephony over cable and VOIP, as well as substantial use of e-mail and other text messaging. Thus, market-based communication alternatives have expanded greatly since 1996.

The December 2003 Commission termination of the case reviewing the Intrastate Access Settlement Pool, Inc. also merits mention.<sup>36</sup> During that case, Commission Staff provided notice to carriers that the issue of a State fund for high cost carriers was being considered. As part of the settlement in that case, no ongoing fund was created. Instead, the access pool will be phased out and a transition fund was created with specific, limited total funding provided over a four year period to assist transition to the termination of the subsidies from the pool. The settlement, as approved by the Commission, defers consideration of a potential, ongoing fund for high cost carriers until near exhaustion of the transition fund without prejudice to any positions on

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<sup>34</sup> *Id.*

<sup>35</sup> “Trend in Telephone Service,” Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Table 11.2 (April, 2005) Available on-line at <http://www.fcc.gov/wcb/iatd/trends.html>

<sup>36</sup> *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the New York State Intrastate Access Settlement Pool, Inc. for Traffic Sensitive Access Rates*, p. 11 (December 23, 2003).

establishing an ongoing fund. To date, the transition fund has not been used and the Commission has not yet issued an order authorizing any carrier to draw monies for the transition fund.

In light of the current levels of federal universal service funding, the lack of evidence of the inadequacy of that funding, the Commission's action in the access pool case, and the lack of use to date of the transition fund, at this time the appropriate action is to decline pursuit of new state universal service initiatives.

### **III. MARKET POWER AND REGULATORY FLEXIBILITY**

As was detailed in Section I of these comments regarding consumer protection, provision of wireless services is intensely competitive, as is extensively documented in the FCC's Competition report. Adequate incentives and remedies for achieving consumer protection objectives exist. Thus, there is no need to implement new, additional and duplicative Commission regulation to address consumer protection and service quality in wireless telecommunications. The FCC's Competition Report addresses competition and market power according to traditional economic analysis, which appears to be adequate.

### **IV. SERVICE QUALITY**

Due to the competitive and national nature of the wireless industry, and the constant improvements in service quality detailed in Section I of these comments, it is inappropriate to extend service quality regulation to wireless carriers. State-specific regulation will raise costs and add a chilling incentive to investment and competition. Thus, the Commission should refrain from imposing any form of service quality standards on the wireless industry.

### **V. LEVEL PLAYING FIELD**

The Level Playing Field section of the June 29 Notice in this docket refers largely to numbering policy. Such policy is predominately a national matter. Nextel Partners sees no basis for new state initiatives in this area.

As a legal matter, §251(e)(1) of the Telecommunications Act of 1996, 47 U.S.C. §251(e)(1), provides the FCC with exclusive jurisdiction over the administration of telephone numbers in the United States and permits the FCC to delegate those duties. The FCC has delegated to individual states the authority to administer area code relief.<sup>37</sup> In 1999, the FCC delegated to New York the authority to engage in certain specified number conservation techniques.<sup>38</sup> Portions of that delegation were interim in that the state specific approach explicitly expired upon the FCC addressing certain issues.

Since then, the FCC has implemented 1000 number block pooling and other related number conservation techniques.<sup>39</sup> These actions have substantially extended the life of area

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<sup>37</sup> 47 C.F.R. §52.19

<sup>38</sup> *New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, Order, 14 FCC Rcd 17467 ¶¶ 7, 8 (1999)

<sup>39</sup> *See* Federal Communications Commission, *Numbering Resource Optimization*, THIRD REPORT AND ORDER AND SECOND ORDER ON RECONSIDERATION 17 FCC Rcd 252, ¶¶8-23 (December 28, 2001).

codes (NPAs)<sup>40</sup>. The most recent NPA exhaust projections for New York developed by the North American Number Plan administrator are shown in the table below.<sup>41</sup>

NPA	Projected Exhaust Year/Quarter
212/646	2010/3Q
315	2010/3Q
516	2012/2Q
518	2011/3Q
585	2015/4Q
607	2017/1Q
631	2009/2Q
716	2013/4Q
718/347	2014/2Q
845	2010/3Q
914	2013/4Q

Number conservation actions by individual states would not substantially improve the national system of number pooling and conservation and would impose additional costs and burdens. Furthermore, access to numbers is and should continue to be a federal issue and should be addressed efficiently at the federal level. Nextel Partners respectfully submits that numbering policy and efficiency would be best served by the Commission working at the national level, as

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<sup>40</sup> See *Id.*, at note 10.

<sup>41</sup> The source of this chart is “2005 NRUF and NPA Exhaust Analysis,” North American Number Plan Administrator, page 15 (April 30, 2005). Available on-line at: [http://www.nanpa.com/reports/reports\\_nruf.html](http://www.nanpa.com/reports/reports_nruf.html). NPA 917 is at exhaust, but other NPAs provide numbers for the same geographic area.

necessary, to improve national numbering policy rather than implementing state specific numbering policies.

## CONCLUSION

Nextel Partners urges the Commission to continue to embrace the existing federal and New York pro-competition policies in the wireless industry that are largely responsible for this industry bringing much lower prices and consistently improving service to customers during the past decade. Nextel Partners also urges the Commission not to begin any new State initiatives in universal service or numbering but instead, as appropriate, to participate in improving the national policies in these areas.

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## Mobile Wireless Prices Have Dropped Dramatically

I am concerned that your Marketplace article "Some Fear Prices Could Rise" (Jan. 28) may have left some readers with the impression that prices for mobile wireless services have been rising over the past 10 years. Federal Communications Commission data show that prices have actually decreased. The price of a wireless minute dropped 81% to just under 10 cents a minute in June 2004 from 44 cents a minute in December 1994. In the past four years alone, under the pro-growth, deregulatory policies of Chairman Michael Powell, prices have dropped almost 50%.

Households do spend more now on wireless services than in 1995, and a key reason is that prices on a per-minute basis have been steadily declining. In many cases, wireless service plans include free long distance and unlimited or virtually unlimited weekend and evening use. This has encouraged consumers to use more wireless service and shift their telecom dollars away from other services. Such substitution is one reason the chart with your article showed declining household expenditures for local and long distance services.

Moreover, prices aren't just cheaper; consumers also get much more "bang" for the same telecom buck. In the past 10 years, wireless carriers have greatly expanded their coverage and upgraded older analog networks with digital technologies, improving reception, enabling more advanced services and generally enhancing the utility of having a mobile phone. Declining prices and improving service explain why there has been an explosion in mobile phone subscribers, and more than 170 million Americans now use mobile phones. As one of your own reporters wrote a year ago, "few products have ever fallen so fast from luxury perk to ubiquitous commodity."

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