

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
NPCR, INC., dba NEXTEL PARTNERS )  
For Designation as an Eligible )  
Telecommunications Carrier in the )  
State of Hawaii. )  
\_\_\_\_\_ )

DOCKET NO. 03-0104

DECISION AND ORDER NO. 21089

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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Commission, State of Hawaii.

K. Higashi.

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DECISION AND ORDER

I.

Background

NPCR, INC., dba NEXTEL PARTNERS ("Nextel Partners"), requests the commission's designation as an eligible telecommunications carrier ("ETC" or "ETCs") for its licensed service area of the State of Hawaii (the "State").<sup>1</sup> Nextel Partners makes its request in accordance with: (1) sections 254(e) and 214(e) of the federal Telecommunications Act of 1996 (the "Act"); and (2) Hawaii Administrative Rules ("HAR") § 6-81-9(a). Nextel Partners requests ETC designation as a prerequisite to being eligible to receive federal universal service support.

Nextel Partners served copies of its application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). Nextel Partners responded to the Consumer Advocate's: (1) preliminary questions,

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<sup>1</sup>Nextel Partners' application, filed on April 25, 2003.

on July 24, 2003; and (2) information requests, on August 14, 2003. On June 1, 2004, the Consumer Advocate filed its position statement. On June 9 and 16, 2004, Nextel Partners filed its initial and supplemental responses to the Consumer Advocate's position statement.

Nextel Partners states that "to receive [federal universal service support] funding for the fourth quarter of 2004 it must obtain designation and be certified that it will use funds as required by law prior to July 1, 2004."<sup>2</sup> In essence, Nextel Partners requests commission action by June 2004.

## II.

### Nextel Partners

Nextel Partners is a duly authorized provider of commercial mobile radio services ("CMRS") in the State. It holds a B and C block license issued by the Federal Communications Commission ("FCC"), and a certificate of registration issued by the commission.<sup>3</sup> In addition, Nextel Partners is a party to an interconnection agreement, as amended, with Verizon Hawaii Inc., the incumbent local exchange carrier.<sup>4</sup>

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<sup>2</sup>Nextel Partners' response, filed on June 9, 2004, at 2. See 47 Code of Federal Regulations ("C.F.R.") § 54.314(d)(4) and (5).

<sup>3</sup>See *In re NPCR, Inc.*, Decision and Order No. 17036, filed on June 15, 1999, in Docket No. 99-0038.

<sup>4</sup>See *In re Verizon Hawaii Inc.*, Decision and Order No. 19489, filed on July 26, 2002, in Docket No. 02-0138 (Amendment No. 1); and *In re GTE Hawaiian Tel. Co. Inc.*, Decision and Order No. 16828, filed on February 18, 1999, in Docket No. 98-0387 (interconnection agreement).

Nextel Partners represents that it services more than 900,000 subscribers nationwide, and has approximately 34,418 residential and single-line business lines in the State.

### III.

#### Eligible Telecommunications Carrier: Designation

Pursuant to sections 254(e) and 214(e)(1) of the Act, only a common carrier that is designated an ETC under section 214(e) is eligible to receive federal universal service support. 47 United States Code ("U.S.C.") §§ 214(e)(1), 254(e); and 47 C.F.R. § 54.201(a) and (d). By definition, an ETC may include a provider of CMRS.<sup>5</sup>

In accordance with section 214(e)(1)(A) and (B) of the Act, an ETC must, throughout the service area for which the designation is received:

- (A) Offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and the resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) Advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. § 214(e); 47 C.F.R. § 54.201(d); and HAR § 6-81-9(a).

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<sup>5</sup>An ETC means a carrier designated as such by a state commission pursuant to 47 C.F.R. § 54.201. The definition of telecommunications carrier, in turn, "includes cellular mobile radio service (CMRS) providers[.]" 47 C.F.R. § 54.5. See also 47 C.F.R. §§ 20.9(a)(4) and 54.201(d).

Section 254(a) of the Act requires that the Federal-State Joint Board on Universal Service ("Joint Board") recommend, and thereafter the FCC identify and define, the services to be supported by federal universal service support mechanisms. 47 U.S.C. § 254(a). The FCC, by regulation, has identified and defined the following core services for federal universal service support:

1. Voice grade access to the public switched network.
2. Local usage.<sup>6</sup>
3. Dual tone multi-frequency signaling or its functional equivalent.
4. Single-party service.
5. Access to emergency services, which includes "access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems[.]"
6. Access to operator services.
7. Access to interexchange service.
8. Access to directory assistance.
9. Toll limitation for qualifying low-income customers.

47 C.F.R. § 54.101(a). See also 47 U.S.C. § 254(a).

To be eligible to receive federal universal service support as a designated ETC, the carrier must offer each of these core services. 47 C.F.R. § 54.101(b). A carrier that receives such support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e); and 47 C.F.R. § 54.7.

Under section 214(e)(2) of the Act, a state commission shall, upon request or its own motion, designate a common carrier

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<sup>6</sup>The FCC defines "local usage" as "an amount of minutes of use of exchange service," prescribed by the [FCC], provided free of charge to end users[.]" 47 C.F.R. § 54.101(a)(2).

that meets the requirements of section 214(e)(1)(A) and (B), an ETC for the service area designated by the state commission. 47 U.S.C. § 214(e)(2); and 47 C.F.R. § 54.201(b). See also HAR § 6-81-9(a).<sup>7</sup> "Service area," in turn, is defined as the geographic area established by the state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5); and 47 C.F.R. § 54.207(a).

Section 214(e)(2) of the Act also provides:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [47 U.S.C. § 214(e)(1)(A) and (B)]. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.<sup>8</sup>

47 U.S.C. § 214(e)(2).

#### IV.

##### Nextel Partners' Position

Sandwich Isles Communications, Inc. ("SIC") is authorized by the commission to provide intrastate telecommunications services on lands administered by the State

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<sup>7</sup>HAR § 6-81-9(a) provides that, upon a carrier's written petition or the commission's own motion, the commission will designate the petitioner-carrier as eligible to receive federal universal service support, provided that it meets the service offerings and advertising requirements set forth in section 214(e) of the Act.

<sup>8</sup>The term "rural telephone company" is defined in 47 U.S.C. § 153(37).

Department of Hawaiian Home Lands.<sup>9</sup> Verizon Hawaii Inc. is the incumbent, statewide carrier of telecommunications services. Both are designated ETCs in the State. See Section IX, below.

Nextel Partners seeks the commission's designation as an ETC "for its entire licensed service area of Hawaii, which service area encompasses the entire study area of Sandwich Isle Communications[, Inc.] and the Verizon Hawaii [Inc.] wire centers" referred to in Exhibit E of its application. Nextel Partners explains that, for the purpose of designating its requested service area: (1) SIC is a rural telephone company; and (2) Verizon Hawaii Inc. is a non-rural telephone company. See 47 U.S.C. § 214(e)(5).

Nextel Partners certifies that, throughout its wireless service area in the State:<sup>10</sup>

1. It offers or will be offering the FCC-designated core services using its existing network facilities, which includes the antennas, cell sites, towers, trunking, mobile switching, and interconnection facilities used to serve its existing customers.
2. It advertises these core services and applicable charges through several different media, and will continue to use media of general distribution to advertise its universal service offerings throughout its designated service area.

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<sup>9</sup>See Docket No. 96-0026, *In re Sandwich Isles Comm., Inc.*

<sup>10</sup>See Exhibit A of the application, written verification of the Vice President/General Counsel for Nextel Partners Operating Corp., the parent entity of NPCR, Inc., dba Nextel Partners.

Nextel Partners specifically represents:<sup>11</sup>

1. Voice grade access to the public switched network: It provides voice grade access to the public switched network through its interconnection arrangements with Verizon Hawaii Inc. and other telecommunications carriers. Thus, its customers are able to make and receive calls on the public switched network within the FCC's specified bandwidth.
2. Local usage: It offers a variety of choices for local usage and will include local usage in its universal service offerings. It will comply with any and all minimum local usage requirements adopted by the FCC. Furthermore, federal universal service mechanisms support local usage and leave it up to the customer and provider to determine the amount of local usage that meets the customer's needs.
3. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent: It currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.
4. Single-party service: The FCC has concluded that a wireless telecommunications provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user's particular transmission. Nextel Partners meets the requirement of single-party service by providing a dedicated message path for all customer calls.
5. Access to emergency services: It currently provides its customers access to emergency services via 911, "and will implement E911 consistent with the FCC's and [commission's] Rules and Orders, and local Public Safety Answering Point . . . requests."<sup>12</sup>
6. Access to operator services: It provides its customers with access to operator services either through its own employees or other telecommunications carriers.

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<sup>11</sup>Nextel Partners' application, at 4 - 8; and Nextel Partners' response, at 7 - 10.

<sup>12</sup>Nextel Partners' application, at 6.

7. Access to interexchange service: It provides its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements with several interexchange telecommunications carriers ("IXC" or "IXCs"). In addition, customers are able to reach their IXC of choice by dialing the appropriate access code.
8. Access to directory assistance: It provides its customers access to directory assistance by dialing 411 or 555-1212.
9. Toll limitation for qualifying low-income customers: Once designated an ETC, it will participate in Lifeline as required, and will provide toll limitation capability in satisfaction of the applicable FCC and commission requirements when requested by a Lifeline subscriber to do so.<sup>13</sup> Presently, it provides toll limitation services for international calls and customer-selected toll calls, and is implementing technology to expand its toll limitation capability. Thus, it currently has, or will have at the time of its designation as an ETC, "the technology to provide toll limitation and will use this technology to provide the service to its Lifeline customers, upon request and at no charge, as part of its universal service offerings."<sup>14</sup>

With its designation as an ETC, Nextel Partners intends

to:

1. Obtain federal high-cost loop, interstate access, and interstate common line support.<sup>15</sup>
2. Offer a basic universal service package to subscribers who are eligible for Lifeline support.

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<sup>13</sup>Section VI.E, below, describes the federal Lifeline and Link Up programs.

<sup>14</sup>Id. at 7 - 8.

<sup>15</sup>On March 27, 2003, Nextel Partners submitted its high-cost, interstate access, and interstate common line support certification letters to the FCC. See Exhibit C of the application.

3. Continue the expansion of its existing network facilities to enhance its ability to provide service to any customer requesting service within the designated service area.

Nextel Partners contends that its designation as an ETC is consistent with the public interest. Specifically:

1. Access to universal service support will allow it to continue to expand and enhance its network infrastructure and facilities throughout the State. The expansion of its existing network facilities will better serve consumers in underserved, high-cost areas of the State.
2. Customers in high cost areas will realize the benefits of competition by having a choice amongst ETCs. This scenario "will allow consumers to choose basic service by determining which carrier provides the most advantageous pricing, services, service quality, customer service, and service availability."<sup>16</sup> In essence, competitive ETC designations serve the public interest.
3. The FCC has recognized the advantages wireless carriers can bring to the federal universal service program. In this respect, customers will have the option of utilizing mobile telephone service, a valued feature in high cost areas where the reliability of landline service may be limited due to geography.
4. ETC designation will further the deployment of new and innovative telecommunications services.
5. Federal funding will generate investment in the State, to the benefit of consumers residing in rural, high cost areas.
6. It will provide larger, local calling areas for consumers.

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<sup>16</sup>Nextel Partners' response, at 15.

7. It will enhance the extensive role Nextel Partners plays in the provision of telecommunications services to Hawaii public schools, libraries and local, state and federal government agencies, specifically law enforcement.<sup>17</sup>
8. There is no evidence that consumers will be adversely affected or harmed by its designation as an ETC.

V.

Consumer Advocate's Position

The Consumer Advocate states that Nextel Partners' request raises a number of policy and first impression matters for this commission:

1. Nextel Partners is the first CMRS provider to request ETC designation in the State. Thus, the manner in which the commission acts on Nextel Partners' request may have serious impacts on future ETC filings by other competitive telecommunications carriers. Specifically, if Nextel Partners is granted ETC designation, "other CMRS providers may be encouraged to apply for ETC designation to be eligible for federal funding in order to remain competitive, thereby escalating demand on the federal USF [i.e., universal service fund] support monies."<sup>18</sup>

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<sup>17</sup>Nextel Partners represents that it is the CMRS provider for "78 public schools and libraries, 14 divisions of Federal Government agencies in Hawaii, 195 military accounts, 74 state-level agencies, and 31 local government agencies, largely including police, fire and similar first-responders." Nextel Partners' application, at 12 - 13; and Nextel Partners' response, at 20.

<sup>18</sup>Consumer Advocate's position statement, at 16.

2. Given the significance of receiving ETC designation, Nextel Partners' request merits the commission's careful and deliberate consideration.

3. On February 27, 2004, the Joint Board issued its latest Recommended Decision ("Recommended Decision").<sup>19</sup> The Joint Board recommends that the FCC adopt five (5) additional guidelines in the ETC designation process. The Consumer Advocate, in turn, recommends that the commission apply these guidelines in this proceeding. See Section V.B, below.

4. Designation as an ETC "should be viewed as a commitment to serve the designated service area, even if the other authorized carriers elect to cease operations for whatever reason (e.g. not profitable, insufficient funds, etc.)."<sup>20</sup> Thus, Nextel Partners must demonstrate that it is ready, willing, and able to serve as a carrier of last resort, should the need arise, and be prepared to fulfill the goals of universal service.

A.

Recommendation: Deny ETC Designation

The Consumer Advocate makes it clear that it supports the interest of any applicant seeking ETC designation when the applicant has demonstrated the merits of its request. That said, it recommends the denial of Nextel Partners' request for

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<sup>19</sup>See *In re Federal-State Joint Board on Universal Service*, Recommended Decision of the Federal-State Joint Board on Universal Service, released February 27, 2004, in CC Docket No. 96-45. Nextel Partners submitted comments in this proceeding. See id., Appendix A, Parties Filing Comments and Reply Comments.

<sup>20</sup>Consumer Advocate's position statement, at 7.

designation as an ETC, concluding that Nextel Partners failed to meet its requisite burden of proof.

1.

Universal Service Goals

The Consumer Advocate states that Nextel Partners failed to:

a. Provide specific information as to how it will enhance and expand its network to serve customers in high cost areas.

b. Identify the specific areas that are presently under-served or the high cost areas that require service, or "set forth the specific actions that need to be taken to enhance its ability to provide service to these areas."<sup>21</sup>

c. Provide any specific information as to what facilities will be acquired to enable it to expand or enhance its services in the State.

d. Demonstrate how and why universal service support is necessary to enable it to effectively compete with other telecommunications carriers, in particular, other wireless telecommunications providers.

Thus, in the Consumer Advocate's view, Nextel Partners failed to demonstrate how the universal service support monies will be utilized to ensure that it is able to provide service to anyone requesting service within the designated service area. Instead, the Consumer Advocate expresses its concern that Nextel

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<sup>21</sup>Id. at 7.

Partners, if granted ETC status, will use federal universal service support monies "to repay the debt that was entered into to acquire/construct its existing facilities, and effectively provide Nextel [Partners] with a competitive advantage over other wireless telecommunications providers [that] have not sought ETC designation."<sup>22</sup>

2.

Comparable Service and Rate Plan

Nextel Partners certifies that it is capable of providing all of the FCC's designated core services. That said, Nextel Partners failed to:

a. Demonstrate how its universal service offering will be comparable to the service presently provided by Verizon Hawaii Inc. and SIC, both landline ETCs, for local usage.

b. Provide any specific information as to the rate plans that will be offered to qualify as a universal service plan to ensure that the goals of universal service will be met with the granting of the requested ETC designation.

Hence, the Consumer Advocate concludes that Nextel Partners "failed to demonstrate or offer any assurances that its universal service offering will reasonably comply with the USF support requirements."<sup>23</sup>

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<sup>22</sup>Id. at 8.

<sup>23</sup>Id. at 10.

3.

Advertising of Core Services

Nextel Partners failed to provide specific information as to how it will advertise its specific universal service plan in the State.

4.

Public Interest

Nextel Partners failed to demonstrate that the granting of its ETC designation in the rural area served by SIC is in the public interest.

B.

Joint Board's Recommended Decision

The Consumer Advocate notes that the Joint Board recommends that the FCC adopt five (5) additional guidelines in the ETC designation process, characterized as permissive federal guidelines for minimum ETC qualifications:

1. The ETC's adequate financial resources. Recommended Decision, at page 10, paragraph 22.

2. The ETC's commitment and ability to provide the FCC-designated core services throughout the designated service area to all customers who make a reasonable request for service. State commissions may choose to implement this guideline by requiring the applicant to submit a formal build-out plan for areas where facilities are not yet built at the time the request

for ETC designation is pending. Id. at pages 10 - 13 and 19 - 20, paragraphs 23 - 29 and 47.

3. The ETC's ability to remain functional in emergency situations. Id. at pages 13 - 14, paragraph 30.

4. Consumer protection requirements. Id. at pages 14 - 15, paragraphs 31 - 34.

5. Local usage. Specifically, a state commission's consideration of a minimum amount of local usage an ETC should offer as a condition of receiving federal universal service support. Id. at pages 15 - 16, paragraphs 35 - 36.

The Joint Board believes that its recommended guidelines will preserve and advance universal service, maintain competitive neutrality, and ensure the long-term sustainability of the federal universal service fund. Id. at 2, paragraph 1.

The Consumer Advocate suggests that the commission apply these guidelines in its review of Nextel Partners' request.

## VI.

### Nextel Partners' Response: Federal Requirements

Nextel Partners urges the commission to apply federal law in designating Nextel Partners an ETC. Such a designation, Nextel Partners reiterates, is consistent with the public interest and the underlying goals of universal service. The Consumer Advocate's recommended denial, Nextel Partners reasons, is "based on standards that cannot be found in federal or state law."<sup>24</sup> Moreover, Nextel Partners notes that no competing

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<sup>24</sup>Nextel Partners' response, at 1.

telecommunications carrier has opposed or intervened in its request for ETC designation.

Nextel Partners also takes issue with the Consumer Advocate's delayed filing, stating that "[h]ad [its request] been granted a year ago, Nextel Partners would have received hundreds of thousands of dollars in funding that could have been used to expand and enhance its network in high cost areas of Hawaii."<sup>25</sup> It further notes that many of the policy concerns identified by the Consumer Advocate can be addressed through the voluntary commitment standards that Nextel Partners commits to meeting as an ETC. See Section VII.B, below.

Under federal law, Nextel Partners states that its designation as an ETC "does not in and of itself mean Nextel Partners will receive federal subsidies, but instead[,] only makes Nextel Partners eligible to receive funding for subscribers of universal service offerings that choose to take service from Nextel Partners."<sup>26</sup>

Nextel Partners reiterates that it meets the applicable requirements under federal law for designation as an ETC. Specifically, it: (1) is a common carrier; (2) currently provides each of the FCC-designated core services; (3) advertises the availability of these core services and charges using media of general distribution; and (4) currently provides, or will provide, the core services using its existing digital network

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<sup>25</sup>Id. at 2.

<sup>26</sup>Id. at 6.

infrastructure, and interconnection facilities. In addition, its designation as an ETC is consistent with the public interest.

A.

Common Carrier Status

Nextel Partners states that as a CMRS provider, it is a telecommunications carrier and common carrier under federal law.

B.

FCC-Designated Core Services

Nextel Partners confirms that it currently offers each of the FCC-designated core services, and will offer these services to its qualifying universal service customers once it is designated an ETC. See Section IV, above.

C.

Advertising

Nextel Partners notes that, to date, neither the FCC nor the commission has adopted any specific advertising guidelines for eligible telecommunications carriers. Nonetheless, Nextel Partners represents that it will: (1) advertise the availability of the FCC-designated core services and charges using media of general distribution; and (2) comply with any advertising requirements implemented by the FCC or the commission.

D.

Nextel Partners' Facilities

Nextel Partners currently provides, or will provide, the FCC-designated core services "using its existing digital network infrastructure, which includes the antennas, cell-sites, towers, trunking, mobile switching, and interconnection facilities it currently uses to serve its existing customers and licensed CMRS spectrum in Hawaii."<sup>27</sup> Furthermore, as an ETC, it will continue to expand and enhance its network facilities to better serve its customers, especially those residing in high cost areas.

E.

Lifeline and Link Up Programs

Lifeline is a federal program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. Part 54, Subpart E, Universal Support for Low-Income Consumers. The federal Link Up program assists consumers with telephone installation costs. Id. An ETC must: (1) make Lifeline and Link Up available to qualifying low-income consumers; and (2) advertise the availability of these federal programs in a manner reasonably designed to reach those likely to qualify for these programs. See 47 C.F.R. §§ 54.405 and 54.411.

As an ETC, Nextel Partners will participate in the Lifeline and Link Up programs, as mandated by federal law. It represents that "[t]he rate for Lifeline service is [the] base

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<sup>27</sup>Nextel Partners' response, at 11.

level service plan, less the federally mandated discount of approximately \$8.00."<sup>28</sup> Moreover, the Link Up program is simply a reduction in the activation charge for a new Lifeline customer. 47 C.F.R. § 54.411.

If it receives ETC designation, Nextel Partners intends to: (1) file an informational tariff with the commission incorporating the rates, terms, and conditions for its Lifeline service offering and its Link Up discounts; and (2) advertise the availability of Lifeline and Link Up using media of general distribution.

F.

Public Interest

Nextel Partners reiterates that its designation as an ETC is consistent with the public interest.<sup>29</sup> See Section IV, above. Nextel Partners urges the commission to facilitate competition in high cost areas so that in the long-run, consumers are provided the benefits of a competitive telecommunications market.

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<sup>28</sup>Id. at 12. See also Nextel Partners' responses to CA-IR-3 and CA-IR-7.

<sup>29</sup>Nextel Partners' application, at 9 - 13; and Nextel Partners' response, at 13 - 20.

VII.

Nextel Partners' Voluntary Commitments

A.

Joint Board's Recommended Decision

With respect to the Joint Board's Recommended Decision, Nextel Partners responds:

1. The FCC has up to a year to act on the Joint Board's recommendations, pursuant to 47 U.S.C. § 254(a)(2). Until the FCC acts, the recommendations are advisory in nature.

2. The commission should not delay its decision in Docket No. 03-0104 by awaiting the FCC's decision in response to the Joint Board's Recommended Decision. Rather, "[i]f action is taken by the FCC in response to the Joint Board Recommended Decision, any new rules will apply to all ETCs, including Nextel Partners, on a going forward basis."<sup>30</sup>

B.

Voluntary Commitments

That said, Nextel Partners agrees to abide by certain self-imposed voluntary commitments regarding customer service, service quality, reporting, network expansion, and the use of federal universal service support. These voluntary commitments, Nextel Partners, states: (1) are equivalent to those recently endorsed by the FCC as consistent with the public interest for

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<sup>30</sup>Nextel Partners' response, at 27 - 28.

ETC designation of CMRS providers;<sup>31</sup> and (2) address the service quality concerns raised by the Consumer Advocate.

As an ETC, Nextel Partners will:

1. Adopt the Cellular Telecommunication and Internet Association's ("CTIA") Consumer Code for Wireless Service, as amended from time to time.<sup>32</sup>

2. Provide to the commission: (a) on an annual basis, the number of consumer complaints per 1,000 handsets; and (b) a point of contact to address any customer service or service quality complaints the commission receives. The contact person will have access to customer account information and the authority to resolve customer service issues.

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<sup>31</sup>Nextel Partners specifically refers to *In re Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, released January 22, 2004, at pages 8, 14 - 15, and 22 - 23, paragraphs 15, 30, and 46.

<sup>32</sup>A copy of CTIA's Consumer Code is attached as Exhibit 7 to Nextel Partners' response. The Code's preamble reads:

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

3. Implement the following steps to ensure that it meets its ETC obligation to respond to reasonable requests for service, verbatim:

- a. If a request comes from a customer within its existing network, Nextel Partners will provide service immediately using customer equipment selected by the customer. In practice, if Nextel Partners receives an Internet or phone order prior to 4:00 p.m., the phone is delivered by overnight mail the following morning.
- b. If a customer cannot be served by the existing network facilities, Nextel Partners will allow the customer to make a written request for service in a specific location. In response, Nextel Partners will take a series of steps to provide service.

First, Nextel Partners will determine whether the customer's equipment can be modified or replaced to provide service in a desired location.

Second, it will determine whether the customer could be provided with other network equipment (booster, antenna, or 3 watt unit) to provide service in the requested location.

Third, Nextel Partners will determine whether adjustments at the nearest cell site can be made to provide service.

Fourth, Nextel Partners will determine whether there are any other adjustments to either the network or the customer facilities that can be made to provide service.

Fifth, Nextel Partners will explore the possibility of offering resold service of carriers that have facilities available to provide service in that location.

Sixth, Nextel Partners will determine whether additional network infrastructure (additional cell site, extender or repeater) could be constructed to provide service, and evaluate the costs and benefits of using high-cost universal service support to serve a number of customers requesting service.

If, after these steps, Nextel Partners is unable to provide service to the customer, it will notify the customer and provide the commission with an annual report on how many requests for service Nextel Partners was unable to meet. The commission retains jurisdiction to consider whether Nextel Partners, as an ETC, has responded appropriately to a request for service.

4. Adhere to the following service disruption standards:

- a. Clear ninety-five (95) per cent of all out-of-service troubles within twenty-four (24) hours of the time such troubles are reported.
- b. Average no greater than six (6) customer trouble reports per one hundred (100) lines per month.
- c. Meet ninety (90) per cent of repair date commitments.

If service is to be interrupted for scheduled repairs or maintenance, or if the occurrence of an interruption in service is otherwise known to Nextel Partners, it will promptly notify its affected customers, and as appropriate, law enforcement and fire agencies, before the interruption occurs. Repair and maintenance work shall be performed at a time that will cause the least inconvenience to its customers.

5. Adhere to the following call answering standards:

- a. At least ninety-seven (97) per cent of all correctly dialed local and inter-island calls will be completed.
- b. Eighty-five (85) per cent of calls made to its customer service line will be answered within twenty (20) seconds from the time that a customer punches "0" to reach an operator.

c. Eighty-five (85) per cent of all calls to inter-island toll operators and directory assistance operators will be delivered within ten (10) seconds.

6. Comply with all applicable FCC regulations and standards implementing section 254(e) of the Act, which requires that universal service support monies be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

At the State level, Nextel Partners will provide the commission, on an annual basis, a summary description of all capital projects that exceed \$500,000, and will also describe network upgrade and expansion projects that were completed in the prior year. This report is intended to detail Nextel Partners' progress towards meeting its build-out plans in the service areas where it is an ETC.

7. File with the commission a map showing the areas in which it is designated an ETC.

8. File an informational tariff with the commission incorporating the rates, terms, and conditions for its Lifeline service offering and its Link Up discounts. See Section VI.E, above.

In addition, although not formally stated as a voluntary commitment, Nextel Partners will comply with all applicable standards governing CMRS providers in the State, including the standards set forth in HAR chapter 6-80, to the extent modified or not waived by Docket No. 03-0186, *Instituting a Proceeding of CMRS Providers in the State* ("Docket No. 03-0186").

VIII.

Other Jurisdictions

Nextel Partners has submitted applications for ETC designation in twenty-one (21) states, including Docket No. 03-0104.<sup>33</sup> Of these states:

1. Proceedings are pending before the FCC with respect to certain areas in seven (7) states: Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia.

2. Proceedings are pending before state commissions for certain areas in five (5) states: Hawaii (entire service area of the State), Idaho, Illinois, Kentucky, and West Virginia.

3. Nextel Partners has been granted ETC designation in six (6) states: Arkansas, Indiana, Iowa, Louisiana, Mississippi, and Wisconsin.

4. It has been denied ETC designation in three (3) states: Minnesota, Nebraska, and Texas.

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<sup>33</sup>The commission, in its Order No. 21050, filed on June 10, 2004, instructed Nextel Partners to "include information on all the jurisdictions where Nextel Partners has applied for ETC designation, and where applicable, been denied or approved designation as an ETC and the reasons thereto." Id. at 2.

Copies of the state commission decisions are attached as exhibits to Nextel Partners' initial and supplemental responses to the Consumer Advocate's position statement.<sup>34</sup>

In general, in the states where Nextel Partners is designated an ETC, the respective commissions found that Nextel Partners met the applicable statutory criteria under federal law. Conversely, in the two (2) states (Minnesota and Nebraska) where written decisions were issued denying Nextel Partners ETC status, those commissions based their denials on the lack of sufficient evidence. In addition, the Nebraska Public Service Commission ("NPSC") held that: (1) Nextel Partners' designation as an ETC was inconsistent with the public interest; and (2) the NPSC's designation of a third or fourth ETC in a given territory served by a non-rural common carrier was "purely discretionary" under section 214(e)(2) of the Act.

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<sup>34</sup>Provided that:

1. With respect to Louisiana, Nextel Partners states that: (A) the Louisiana Public Service Commission voted to grant Nextel Partners ETC status; and (B) no written order has been issued.
2. With respect to Texas, Nextel Partners explains that: "On May 13, 2004, the Texas [Public Utility] Commission orally denied ETC designation. No written order has issued." Nextel Partners' supplemental response, at 7.

IX.

Discussion

A.

Federal Law

The commission has: (1) granted ETC status to GTE Hawaiian Telephone Company, Incorporated ("GTE Hawaiian Tel," nka Verizon Hawaii Inc.) and SIC; and (2) denied ETC designation to TelHawaii, Inc., without prejudice.<sup>35</sup> In each case, the commission focused on whether the applicant met the requirements under section 214(e)(1)(A) and (B) of the Act, for designation as an ETC.

The federal government has delegated to the commission the authority to designate a telecommunications carrier as being eligible to receive federal universal service support. Federal law mandates that a state commission designate an applicant an ETC if it meets the requirements under section 214(e)(1)(A) and (B) of the Act. Furthermore, the state commission:

1. In an area served by a rural telephone company, may designate another common carrier an ETC if such a designation is consistent with the public interest; and

2. In all other areas, shall designate more than one (1) common carrier an ETC for a service area designated by the state commission, so long as each requesting carrier meets

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<sup>35</sup>See Decision and Order No. 16111, filed on December 4, 1997, in Docket No. 97-0363 (GTE Hawaiian Tel); Decision and Order No. 16737, filed on December 9, 1998, in Docket No. 98-0317 (SIC); and Decision and Order No. 16118, filed on December 11, 1997, in Docket No. 97-0409 (TelHawaii, Inc.).

the requirements of section 214(e)(1)(A) and (B) of the Act. 47 U.S.C. § 214(e)(2).

The Consumer Advocate seeks to expand the statutory requirements set forth in section 214(e)(1)(A) and (B), to include the Joint Board's additional recommendations.

The Joint Board encourages state commissions to conduct rigorous, fact-intensive reviews of requests for ETC designation. Recommended Decision, at pages 5 - 6, paragraphs 9 - 13. Concomitantly, the Joint Board believes that its additional recommendations "concerning ETC qualifications should be flexible and non-binding on the states[,]" noting that "[e]ach state commission [is] uniquely qualified to determine its own ETC eligibility requirements as the entity most familiar with the service area for which ETC designation is sought." Id. at page 5, paragraph 10.

At this juncture, the FCC has not ruled on the merits of the Joint Board's recommendations. Instead, on June 8, 2004, the FCC issued its Notice of Proposed Rulemaking, seeking comments on the Recommended Decision.<sup>36</sup>

The commission, thus, is faced with: (1) deferring this proceeding until the FCC formally adopts or denies, in whole or in part, the Joint Board's recommendations; or (2) addressing the merits of Nextel Partners' request at this time. In this instance, the commission opts to act on Nextel Partners' request,

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<sup>36</sup>*In re Federal-State Joint Board on Universal Service*, FCC's Notice of Proposed Rulemaking, released June 8, 2004, in CC Docket No. 96-45.

without delay, while embracing the principles underlying the Joint Board's recommendations.

B.

ETC Designation

Universal service is an evolving level of quality telecommunications services that "should be available at just, reasonable, and affordable rates." 47 U.S.C. § 254(b)(1) and (c)(1). The underlying principles of universal service, as set forth in section 254(b)(3), are:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3).

The Consumer Advocate urges the commission to proceed cautiously in these un-chartered waters, noting that if Nextel Partners, as a CMRS provider, is granted ETC status, other comparable providers may follow as well. Ultimately, the Consumer Advocate seeks to preserve the integrity of the federal universal service fund.

The commission finds that the granting of ETC designation to a CMRS provider such as Nextel Partners is not without precedent. See Section VIII(3), above. Furthermore, a request for ETC status represents a commitment on the applicant's part that it seeks to offer, advertise, and provide the

FCC-designated core services to qualified consumers, at affordable, comparable rates.

The commission finds that Nextel Partners meets the applicable requirements under federal law for designation as an ETC for its service area within the State. Specifically, Nextel Partners:

1. Is a common carrier. 47 U.S.C. § 153(10) and (44); and 47 C.F.R. §§ 20.9(a)(4), 54.201(d), and 54.5.

2. Offers the FCC-designated core services within its designated service area, either using its own facilities or a combination of its own facilities and the resale of other telecommunications carriers' services.<sup>37</sup> 47 U.S.C. §§ 254(a) and 214(e)(1)(A); and 47 C.F.R. §§ 54.101 and 54.201(d)(1) and (f).

3. Advertises the availability of these core services using media of general distribution. 47 U.S.C. § 214(e)(1)(B); and 47 C.F.R. § 54.201(d)(2).

4. Will advertise and make available to qualifying low-income consumers Lifeline and Link Up services. 47 C.F.R. Part 54, Subpart E.

In making these pertinent findings, the commission emphasizes that Nextel Partners' application is verified under oath by the Vice President/General Counsel of its parent company,

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<sup>37</sup>Nextel Partners represents that upon its ETC designation, it will offer and participate in the federal Lifeline and Link Up programs available to qualified low-income customers. See Joint Board's Recommended Decision, at page 9, paragraph 20 (the FCC has determined that the "offer" requirement does not require a telecommunications carrier to actually provide the core services throughout its designated service area prior to its ETC designation).

Nextel Partners Operating Corp., pursuant to HAR § 6-61-17.<sup>38</sup> Furthermore, Nextel Partners' initial and supplemental responses to the Consumer Advocate's position statement are signed by local counsel. See HAR §§ 6-61-1, 6-61-13(a), and 6-61-16(c); and Rule 11, Hawaii Rules of Civil Procedure.

C.

Public Interest

The commission also finds that Nextel Partners' designation as an ETC is consistent with the public interest.

Nextel Partners is a provider of CMRS. Its designation as an ETC will provide eligible consumers with an additional choice of service providers and greater mobility, specifically in the study area served by SIC.

In addition, as an ETC, Nextel Partners commits to participating in the federal Lifeline and Link Up programs, thus providing qualified low-income customers with the choice of using CMRS, and access to the FCC-designated core services. Nextel Partners, through its self-imposed voluntary commitments, also commits to: (1) promptly fulfilling all reasonable customer requests for service; and (2) providing a quality level of service. Finally, Nextel Partners commits to advertising, offering, and providing the FCC-designated core services

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<sup>38</sup>See Exhibit A of Nextel Partners' application. The affidavit of this same company official also formed the basis of Nextel Partners' ETC designation by the Public Service Commission of Wisconsin and the Arkansas Public Service Commission, respectively. See Nextel Partners' application, Exhibit 3, at 18, paragraph 8, and Exhibit 4, at 1 - 2 and 7.

throughout the State, thus, minimizing any potential for "cherry picking" or "cream skimming" on its part.

D.

Conditions of ETC Designation

Nextel Partners recommends that the commission impose the voluntary commitments as conditions to its ETC designation. Nextel Partners acknowledges the commission's authority to impose conditions upon an ETC, is consistent with federal law.<sup>39</sup>

To ensure the integrity of the federal universal service fund and its support programs, the commission imposes the following conditions upon Nextel Partners' ETC designation, consistent with the public interest and the Consumer Advocate's concerns:

1. Nextel Partners' voluntary commitments, set forth in Section VII.B, above, are adopted herein by reference. Unless ordered otherwise, the due date for the annual reports referenced in Section VII.B shall be December 31<sup>st</sup> of each calendar year, with the first report due by December 31, 2004. Presently, these annual reports consist of: (A) the number of consumer complaints per 1,000 handsets; (B) the number of requests for service Nextel Partners was unable to meet; and (C) a summary description of all capital projects that exceed \$500,000, and the network upgrade and expansion projects that were completed in the previous year.

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<sup>39</sup>See, e.g., Joint Board's Recommended Decision, at pages 5 - 7 and 14 - 15, paragraphs 10, 15, and 33 - 34 (States may impose their own eligibility requirements beyond those listed in 47 U.S.C. § 254(b)(1)) (States may extend generally applicable requirements to all ETCs to ensure, preserve, and advance universal service).

In addition, for all consumer requests received for areas that are presently not served by Nextel Partners' existing network facilities, Nextel Partners shall provide information on the number of requests it was unable to meet and the reasons why, and the number of requests it did meet, and under which step of its voluntary commitment checklist (paragraph 3(b)) it was able to provide service.

2. Nextel Partners shall comply with all applicable standards governing CMRS providers in the State, including the standards set forth in HAR chapter 6-80, to the extent modified or not waived by Docket No. 03-0186.

3. Nextel Partners' use of federal universal service support monies shall be consistent with applicable federal law, including any FCC regulations, decisions, and orders. In this respect, the commission reiterates that section 254(e) of the Act explicitly limits an ETC's use of such funds "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of [section 254(e)]." 47 U.S.C. § 254(e).

As part of this condition, Nextel Partners will also be required to file, on an annual basis, its formal build-out plan, describing in detail its plan to expand and enhance its network infrastructure and facilities with the use of federal universal service support monies. Nextel Partners shall also identify the "problem areas" and consumers it intends to serve, explain why these areas or consumers have the need for service by an ETC, and

describe how it intends to provide the core services to these areas and consumers utilizing federal universal service support monies "for the provision, maintenance, and upgrading of [its] facilities and services for which the support is intended."

Unless ordered otherwise, the due date for Nextel Partners' annual formal build-out plan shall be December 31<sup>st</sup> of each calendar year; provided that the first two (2) reports shall be due by September 1 and December 31, 2004.

4. By September 1, 2004, Nextel Partners shall file its detailed advertising plan for the provision of the FCC-designated core services, including the content and manner of its planned advertisements, and the targeted consumers.

5. Nextel Partners shall comply with any and all future laws, decisions, or orders applicable to the federal universal service fund and support programs, including the FCC's decision on the Joint Board's Recommended Decision.

6. Consistent with the commission's general and investigative powers, Nextel Partners shall fully cooperate and respond to any commission requests for information or data. Likewise, Nextel Partners shall fully cooperate with any similar requests from the Consumer Advocate.

7. The commission reserves the right to revoke Nextel Partners' ETC status: (A) should any of the information or data provided by Nextel Partners in this proceeding be proven inaccurate or incorrect; (B) if Nextel Partners' receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions,

and orders, or applicable State law, including any of the conditions imposed by the commission herein; or (C) if Nextel Partners does not satisfy any of the conditions or requirements imposed by the commission. As noted by the Joint Board, in its Recommended Decision:

Where an ETC fails to comply with [the] requirements in section 214(e) and any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification previously granted. Several states have already adopted such requirements in their ETC designation processes. The Alaska Commission required a competitive ETC to file an annual certification in order to monitor the continued appropriate use of funds.

Joint Board's Recommended Decision, at page 20, paragraph 48 (footnotes and text therein omitted); see also id. at page 19, paragraph 45 (the FCC and states have the authority to rescind ETC designations for failure to comply with the requirements of Section 214(e) of the Act and any other imposed conditions).

The commission expresses its confidence that the foregoing conditions sufficiently address the Consumer Advocate's overall concerns.

E.

#### Designated Service Area

Nextel Partners' designated service area encompasses the rural and non-rural service areas referred to in Exhibit E of its application, i.e., its licensed service area within the State.

F.

Annual State Certification

The Joint Board recommends that the states adopt an annual certification process "for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs." See Recommended Decision, at pages 19 - 20, paragraphs 46 - 48.

The commission intends to examine this issue in a future proceeding. Any annual certification process, if adopted by the commission, will apply to all ETCs designated in this State.

X.

Orders

1. Nextel Partners' request for designation as an eligible telecommunications carrier under federal law is approved, effective from the date of this decision and order. Its designated service area encompasses the rural and non-rural service areas referred to in Exhibit E of its application, i.e., its licensed service area within the State.

2. The conditions set forth in Sections VII.B and IX.D, above, are adopted and incorporated herein by reference.

3. Nextel Partners shall comply with its voluntary commitments set forth in Section VII.B, and with the conditions set forth in Section IX.D, above. In addition, Nextel Partners shall comply with all applicable standards governing CMRS providers in the State, including the standards set forth in HAR

chapter 6-80, to the extent modified or not waived by Docket No. 03-0186.

4. Unless ordered otherwise, the due date for the annual reports referenced in Section VII.B shall be December 31<sup>st</sup> of each calendar year, with the first report due by December 31, 2004. Presently, these annual reports will consist of: (A) the number of consumer complaints per 1,000 handsets; (B) the number of requests for service Nextel Partners was unable to meet; and (C) a summary description of all capital projects that exceed \$500,000, and the network upgrade and expansion projects that were completed in the previous year. In addition, for all consumer requests received for areas that are presently not served by Nextel Partners' existing network facilities, Nextel Partners shall provide information on the number of requests it was unable to meet and the reasons why, and the number of requests it did meet, and under which step of its voluntary commitment checklist (paragraph 3(b)) it was able to provide service.

5. Nextel Partners is also required to file, on an annual basis, its formal build-out plan, describing in detail its plan to expand and enhance its network infrastructure and facilities with the use of federal universal service support monies. Nextel Partners shall also identify the "problem areas" and consumers it intends to serve, explain why these areas or consumers have the need for service by an ETC, and describe how it intends to provide the core services to these areas and consumers utilizing federal universal service support monies "for

the provision, maintenance, and upgrading of [its] facilities and services for which the support is intended."

Unless ordered otherwise, the due date for Nextel Partners' annual formal build-out plan shall be December 31<sup>st</sup> of each calendar year; provided that the first two (2) reports shall be due by September 1 and December 31, 2004.

6. By September 1, 2004, Nextel Partners shall file its detailed advertising plan for the provision of the FCC-designated core services, including the content and manner of its planned advertisements, and the targeted consumers.

7. Nextel Partners' use of federal universal service support monies shall be consistent with applicable federal law, including any FCC regulations, decisions, and orders.

8. Nextel Partners shall comply with any and all future laws, decisions, or orders applicable to the federal universal service fund and support programs, including the FCC's decision on the Joint Board's Recommended Decision.

9. Nextel Partners shall fully cooperate and respond to any requests for information or data from the commission or Consumer Advocate.

10. The commission reserves the right to revoke Nextel Partners' ETC status: (A) should any of the information or data provided by Nextel Partners in this proceeding be proven inaccurate or incorrect; (B) if Nextel Partners' receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions, and orders, or applicable State law, including any of the

conditions imposed by the commission herein; or (C) if Nextel Partners does not satisfy any of the conditions or requirements imposed by the commission.

DONE at Honolulu, Hawaii this 25th day of June, 2004.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

03-0104.sl

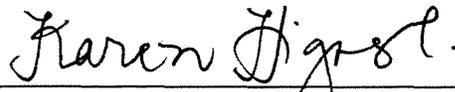
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21089 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: June 25, 2004