

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

FEDERAL-STATE JOINT BOARD ON )  
UNIVERSAL SERVICE )  
)  
)  
NPCR, INC. d/b/a NEXTEL PARTNERS ) Docket No. 03-0312  
)  
)  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State )  
of Illinois. )

REPLY OF THE  
ILLINOIS INDEPENDENT TELEPHONE ASSOCIATION  
TO NPCR, INC.'S BRIEF ON EXCEPTIONS AND EXCEPTIONS

THIS REPLY to NPCR, Inc.'s Brief On Exceptions and Exceptions to the Administrative Law Judge's Proposed Order ("Proposed Order") dated May 3, 2004 is filed on behalf of the Illinois Independent Telephone Association ("IITA") in accordance with the established schedule. The Proposed Order grants the Motion To Dismiss filed by the IITA on June 16, 2003 and dismisses this proceeding without prejudice.

The Proposed Order, as issued by the Administrative Law Judge, should be adopted and the Exceptions of NPCR rejected. Neither the Staff, the IITA, nor the numerous individual companies allowed to intervene in this proceeding have filed any Exceptions to the Proposed Order as issued by the Administrative Law Judge.

The Brief On Exceptions and Exceptions filed by NPCR contain nothing more than a reiteration of the arguments that have been made throughout this docket and in Docket No. 03-0487. Those arguments were considered by the Administrative Law

Judge and rejected in the Proposed Order issued in this docket and have been considered and rejected by the Commission in Docket No. 03-0487 wherein the Commission dismissed without prejudice the Application for a Certificate of Service Authority because of the Applicant's failure to show that it possessed a construction permit or operating license from the Federal Communications Commission as required by the clear provisions of Section 13-401 of The Illinois Public Utilities Act ("the Act"). The requirements of Section 13-401 are not a barrier to entry since they require nothing more than a provider of Commercial Mobile Radio Service ("CMRS") to demonstrate to this Commission that it has met the requirements of the federal law so as to have been issued a construction permit or license by the Federal Communications Commission ("FCC"). As set forth in the Commission documents, attached to the IITA's Motion To Dismiss, some 40 other CMRS providers have applied for and have been granted Certificates of Service Authority by this Commission in compliance with the requirements of the Illinois Act.

At a minimum, NPCR infers in the final paragraph on page 1 of NPCR's Brief On Exceptions and in the Exception language for Finding (5) that the IITA, Staff and other parties to this docket and/or the Administrative Law Judge have caused this docket to be pending for over a year are totally baseless and without merit. It is NPCR and its affiliates that filed a Petition in this docket using NPCR as the Petitioner when the company held neither an FCC license or a construction permit and/or a Certificate of Service Authority from this Commission. It is NPCR and its affiliates who never filed testimony in support of their Petition in this docket although they could have done so as early as the date they filed the Petition. It is NPCR and its affiliates that have failed to

provide Responses to numerous Data Requests properly served upon NPCR in this docket at all, let alone within the time period specified in 83 Ill. Adm. Code Part 200. It is NPCR and its affiliates that have resisted filing an Application for a Certificate of Service Authority for several months prior to agreeing to make such a filing with the full knowledge that this docket would be held in abeyance pending the receipt of an Order in Docket No. 03-0487. It is NPCR and its affiliates that applied for a Certificate of Service Authority in Docket No. 03-0487 in the name of NPCR and another affiliate, neither of which possessed an FCC construction permit or license, despite clear requirements of Section 13-401. It is NPCR and its affiliates that when given an opportunity by the Staff and the Administrative Law Judge to amend its Certificate Application in Docket No. 03-0487 still failed to include the FCC license holders as Applicants in Docket No. 03-0487.

Finally, it is NPCR and its affiliates who at the status hearing held in this docket on April 14, 2004 refused, for the purpose of this docket, to indicate whether the FCC licensed affiliates would reapply for a Certificate of Service Authority from this Commission. As noted in the last sentence of the second paragraph on page 2 of the Proposed Order, it was only then that the IITA renewed its Motion To Dismiss. Any delays, problems or failures that NPCR has suffered in this docket are totally of their own making.

NPCR is not in compliance with the laws of the state applicable to telecommunications carriers, including CMRS providers, as enacted by the Illinois General Assembly. By not properly submitting itself to this Commission's jurisdiction, NPCR has denied the Commission the ability to protect the public safety and welfare, the

ability to ensure the continued quality of telecommunications service, and the ability to safeguard the rights of consumers.

The Exceptions of NPCR should and must be rejected and the Proposed Order, as issued by the Administrative Law Judge, should be approved by the Commission.

DATED this 24<sup>th</sup> day of May, 2004.

Respectfully submitted,

ILLINOIS INDEPENDENT TELEPHONE  
ASSOCIATION

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Certificate of Service

Docket No. 03-0312

A copy of the foregoing Reply of the Illinois Independent Telephone Association to NPCR, Inc.'s Brief On Exceptions and Exceptions was served via e-mail upon those persons listed below this 24<sup>th</sup> day of May, 2004.

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