

**Schedule 5.12(d)**  
**Leased Pending Applications**

<b>Lessor</b>	<b>Market</b>	<b>State</b>	<b>CH</b>	<b>Call Sign</b>	<b>Pending Application/Purpose</b>
Libmot Communications Partnership	Birmingham (Bessemer)	AL	H2	WNTJ807	Extension of construction permit, FCC File No MD-20030205AAB
Line of Site, Inc	Montgomery	AL	E1-4	WMH505	Major modification, FCC File No 20010523AAA
George Kern	Montgomery	AL	H1	WNTJ725	Major modification, FCC File No 20011010AAA
John Dudeck	Montgomery	AL	H2	WNTJ802	Major modification, FCC File No 20011010AAC
Melissa S Wilson	Montgomery	AL	H3	WNTJ773	Major modification, FCC File No 20011010AAD
Nucentrix Spectrum Resources, Inc	Ocala	FL	F1-4	WLW911	Major modification, FCC File No. 20000818CEZ; extension of construction permit, FCC File No MD-20030227AAA
Bonnie D O'Connell	Vidalia	GA	E1-4	WMY295	Extension of construction permit, FCC File No MD-20030307AAA
Video/Multipoint, Inc	Alexandria	LA	F1-4	WMI870	Major modification, FCC File No 20000818DHA
George Bott	Buffalo	NY	2	WMY429	Extension of construction permit, FCC File No 20020627AAB. Two-way hub application using MDS2A FCC File No 20010420ACW
George Bott	Buffalo	NY	1	WMY428	Extension of construction permit, FCC File No 20020627AAA Two-way hub application using MDS1 FCC File No. 20010420ACV
Champion Industries, Inc.	Providence	RI	F1-4	WLK212	Assignment of license, FCC File No 9650667; extension of construction permit, FCC File No 9850016, Two-way booster application using F1-3 FCC File No 20000818DBR

**Schedule 5.13(b)**  
**Third Party Licenses – Proceedings**

Licensee	Market	State	CH	Call Sign	Proceedings
Eagleview Technologies, Inc	Chattanooga	TN	1	WPE83	Petition to deny filed on 8/1/01 by David Hill against pending license renewal application, FCC File No BRIF-20010316ABA

**Schedule 5.13(c)**

**Third Party Pending Applications**

<b>Licensee</b>	<b>Market</b>	<b>State</b>	<b>CH</b>	<b>Call Sign</b>	<b>Pending Applications</b>
Alliance for Higher Education	Dallas	TX	F1-F4	KWU30	Assignment of License to CS Wireless, FCC File No 50423-CM-P-98
Alliance for Higher Education	Fort Worth	TX	E1-E4	KWU29	Assignment of License to CS Wireless, FCC File No 50423-CM-P-98
Fagleview Technologies, Inc	Chattanooga	TN	1	WPE83/ WPE83- H01	Renewal application, FCC File No. BRIF-20010316ABA; assignment of license to WorldCom Broadband Solutions, FCC File No BALMD-20011205AAB, modification application for WPE83-H01, FCC File No BNPMDH-20010530AAC
Champion Industries, Inc	Providence	RI	F1-F4	WLK212	Assignment of License to Atlantic Microsystems, Inc , FCC File No 9650667

**Schedule 5.14  
Tax Matters**

**Tax Liens**

**Federal**

None

**State and Local**

County Tax Lien was entered on 12/02/2002 against Cross Country Wireless, Inc at 500 Clinton Center, Clinton, Mississippi, by the County of Los Angeles (Number 20022908592) in the amount of \$88,250

There are 33 additional tax liens filed against the Sellers (excluding WorldCom) that individually do not exceed \$50,000, but in aggregate total \$277,238

**Schedule 5.15(a)  
Proceedings**

Berg v ACS Enterprises, Inc  
Pennsylvania Court of Common Pleas, Bucks County

CIBC World Wide Markets Corp v WorldCom, Inc  
New York Supreme Court, New York County

Roland Hebert v Wireless One, L L C  
Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Inter City Cable v ACS Enterprises et al  
Binding Mediation

Mississippi Communications Management, Inc d/b/a WBMS Channel 10 v WorldCom, Inc.,  
Wireless One, Inc  
Mississippi Circuit Court, Hinds County

Nolen v. Nucentrix Broadband Networks Inc et al  
U S District Court for the Southern District of Texas

Webb, David and Dixon, Thomas v CS Wireless Systems, Inc  
U S District Court for the Eastern District of Texas

Wireless One, Inc v Mississippi EdNet Institute, Inc  
American Arbitration Association

Taylor T Perry and Melinda Perry v Wireless One, Inc  
CV-2002-064 (Ala Cir Ct , Marengo County)

The following objections to the Sale Motion have been filed with the Bankruptcy Court by third parties

<b>Person Filing Objection</b>	<b>Docket #</b>	<b>File Date / Comments</b>
Nucentrix Broadband Networks, Inc	6117	Filed. 05/28/2003
SBC Communications Inc	6135	Filed 05/29/2003  Overruled/Resolved at Sale Procedures Hearing
Northwest Communications, Inc.	6145	Filed: 05/29/2003
North American Catholic Educational Programming Foundation, Inc	6148	Filed 05/29/2003

Sprint Communications Company, L P , Sprint Spectrum L P	6150	Filed 05/29/2003 Overruled/Resolved at Sale Procedures Hearing
Washington Department of Revenue and Labor & Industries	6666	Filed: 06/19/2003
Preston Tower Condominium Association	6828	Filed 06/25/2003
Becker Broadcasting and KJMJ TV, Inc	7040	Filed 07/01/2003
Larry Ivan Glick on behalf of Certain ITFS Licensees	7079	Filed 07/02/2003
Black Warrior Telecommunications Consortium, Inc	7110	Filed 07/03/2003
Panhandle Area Educational Consortium	7121	Filed 07/07/2003
Charles and Mary Wangerow	undocketed	
WXBM Radio	undocketed	
Blakeney Communications, Inc	7028	Filed 06/26/03
Certain ITFS Licensees	7067	Filed: 07/02/03
Fairfax County	7059	Filed 07/02/03
Tax Collector of Guilford County, NC	7063	Filed 06/30/03
Mobile County, Alabama	undocketed	
Poe Van Doren	undocketed	
Golden Bear Communications, Inc	undocketed	

Any objections by third parties relating to Cure Amounts or the proposed sale of the Common Equipment to Purchaser, filed with the Bankruptcy Court after the date of execution of the Agreement, shall be deemed to be disclosed on this Schedule 5.15(a).

**Schedule 5.15(b)**  
**Judgments - Exceptions**

None

**Schedule 5.16**  
**Compliance with Applicable Laws**

None

**Schedule 5.18**  
**Non-Ordinary Course; Certain Changes**

None

**Schedule 5.19**  
**Network Equipment**

(See attached)

**Schedule 5.23**  
**Copyright**

None

**Schedule 5.25(a)**  
**Acquired WCS Agreements**

- 1     March 25, 1997 License Partitioning Agreement between BellSouth Corporation and Wireless One, Inc , Amendment to License Partitioning Agreement dated September 2, 1997, Second Amendment to License Partitioning Agreement dated November 14, 1997
  
- 2     September 14, 2001 Limited Liability Company Interest Purchase Agreement between Wireless One of North Carolina, L.L.C., CT Wireless Cable, Inc , Wireless One, Inc. and WorldCom Broadband Solutions, Inc
  
- 3     April 2002 WCS Partition Agreement between Nucentrix Spectrum Resources, Inc. and WorldCom Broadband Solutions, Inc

**Schedule 5.25(b)**

**Acquired WCS Agreements – Enforceability**

The April 2002 WCS Partition Agreement between Nucentrix Spectrum Resources, Inc. and WorldCom Broadband Solutions, Inc. is the subject of a pending application for approval by the FCC (File No 0000878079)

**Schedule 7.01**  
**Operation of Acquired Assets Prior to Closing**

During the period from the date of the Agreement to the Closing Date, Sellers may do any of the following

- 1 cease actively seeking to add new customers,
- 2 terminate existing customers, except as otherwise required to maintain the validity of the Company FCC Licenses, Leased FCC Licenses, and the Acquired Spectrum Leases, and
- 3 terminate and not back-fill employees who are not needed to maintain the Acquired Assets

**Schedule 7.22  
Short Term Leases**

In addition to the Real Property Leases and Acquired Spectrum Leases listed below, each Real Property Lease and each Acquired Spectrum Lease that is scheduled to terminate or expire on or before June 30, 2004, as set forth on Schedules 2.02(i) and 2.02(vi), respectively, shall be deemed to be set forth on this Schedule 7.22

**Acquired Spectrum Leases**

<u>Lessee</u>	<u>Lessor</u>	<u>Market</u>	<u>CH</u>	<u>Call Sign</u>	<u>Lease Expiration Date</u>
WorldCom Broadband Solutions, Inc	Louis Powell	Demopolis, AL	F	WLW737	1/26/2004
WorldCom Broadband Solutions, Inc	George C. Wallace State Community College	Dothan, AL	G	WNC752	7/16/2004
WorldCom Broadband Solutions, Inc	Theodore D. Little Survivor's Trust	Huntsville (Madison), AL	E	WLR564	4/13/2004
WorldCom Broadband Solutions, Inc	Line of Site, Inc	Montgomery, AL	E	WMH505	3/22/2004
WorldCom Broadband Solutions, Inc	Nucentrix Spectrum Resources, Inc	Ocala, FL	F	WLW911	5/20/2004
WorldCom Broadband Solutions, Inc	Stephanie Engstrom	Pensacola (Pace), FL	F	WMH721	5/27/2003
WorldCom Broadband Solutions, Inc	Video/Multipoint, Inc	Alexandria, LA	F	WMI870	4/18/2004
WorldCom Broadband Solutions, Inc	Kanew Broadcast Technologies	Jackson, MS	F	WLW835	4/1/2004
WorldCom Broadband Solutions, Inc	New York MDS, Inc	New York, NY	MDS2	WLK227	2/1/2004
WorldCom Broadband Solutions, Inc	Red Memphis F Partnership	Memphis, TN	F	WHT728	2/28/2004
WorldCom Broadband Solutions, Inc	State Technical Institute at Memphis	Memphis, TN	G	WNC363	7/26/2004
			G2-G4	WNC363-B01	
			G2-G4	WNC363-B02	
			G2-G4	WNC363-B03	
			G2-G4	WNC363-H01	
			G2-G4	WNC363-H02	
			G2-G4	WNC363-H03	
WorldCom Broadband Solutions, Inc	Omega Radio Telephone	San Antonio, TX	F	WHT694	11/3/2003

**Real Property Leases**

<b><u>Market</u></b>	<b><u>Site Address</u></b>	<b><u>Lease Expiration Date</u></b>
Auburn, AL	2 km S intersection of US Hwy 431 & AL Hwy 147 Opelika, AL 32-45-30/85-28-20	01/31/2004
Florence, AL	1215 New Cut Road Tusculmbia, AL 36374 34-40-24/87-42-56	10/31/2002
Huntsville, AL	Capshaw Mountain Madison, AL 35773 34-49-06/86-44-16	06/30/2003
Los Angeles, CA	1518 Skyline Drive, La Habra Heights, CA 33-58-24/117-56-31	11/30/2002
San Diego, CA	6 12 km South of Palomar Mountain 33-18-32/116-50-38	06/14/2004
San Francisco, CA	San Bruno Mountain Tower 1, Daly City, CA 37-41-17/122-26-07	12/31/2001
Hartford, CT	200 Colt Highway (Rattlesnake Mountain), Route 6, Farmington, CT 06032 41-42-13/72-49-55	09/30/2003
Washington, DC	5202 River Road, Bethesda, MD 38-57-49/77-06-18	03/31/2003
Ocala, FL	West of Alvarez between 4 <sup>th</sup> and 5 <sup>th</sup> Streets Ocala, FL 29-10-57/82-08-00	06/17/2004
Pensacola, FL	1687 Quintet Road, Pace, FL 32571 30-39-28/87-11-42	06/30/2002
Columbus, GA	13 Cheney Road, Phenix City, AL 36869 32-27-54/85-03-28	06/30/2003
Alexandria (Dry Prong), LA	1198A Forest Service Road, 116A Dry Prong, LA 71423 31-33-56/92-32-50	05/31/2001
Baton Rouge, LA	One American Place, 300 Main Street, Baton Rouge, LA 70801	07/31/2003
Monroe, LA	1400 Day Road, Fairbanks, LA 71240 32-39-38/91-59-28	07/31/2002
Springfield, MA	101 West Street 42-06-32/72-36-44	02/28/2004
Baltimore, MD	3900 Hooper Avenue, Baltimore, MD WBFF Fox Tower Channel 45 39-20-10/76-38-59	07/31/2003
Minneapolis-St. Paul, MN	IDS Center, 80 South 8 <sup>th</sup> Street, Minneapolis, MN 55402 44-58-34/93-16-21	06/30/2004
Minneapolis-St Paul, MN	IDS Center, 80 South 8 <sup>th</sup> Street, Minneapolis, MN 55402 44-58-34/93-16-21	12/31/2002
Rochester, MN	1220 4 <sup>th</sup> Avenue, Rochester, MN 55302	Month-to month

Hattiesburg (Columbia), MS	44-03-11/92-36-57 3 2 km E Columbia, MS 31-14-49/89-47-19	04/30/2003
Hattiesburg (Waynesboro), MS	4 0 km W Waynesboro, MS 31-41-17/88-41-24	04/30/2003
Natchez (Bude), MS	26A Col John Pitchford Parkway, Natchez, MS 31-30-34/91-24-19	11/06/2002
Oxford, MS	1 mi W of I-55 Sweethome Road Grenada, MS 33-45-06/89-51-12	05/31/2003
Oxford (Bruce), MS	403 W Calhoun Bruce, MS 34-01-28/89-21-10	05/31/2003
Oxford, MS	1 9 km W of US-61 & SR-6, Clarksdale, MS 34-12-29/90-33-36	04/30/2003
Poplarville, MS	Pearl River County, Poplarville, MS 30-52-35/89-35-21	12/16/2003
Picayune, MS	5 6 km N of 159 & SR 203 Picayune, MS 30-34-21/89-37-54	04/30/2003
Inverness (Winona), MS	Montgomery County Winona, MS 33-34-56/89-44-52	03/17/2003
Jackson, MS	1407 Harvey Drive Jackson, MS 39209 32-16-53/90-17-41	12/31/2002
Jackson, MS	1407 Harvey Drive, Jackson, MS 39209 32-16-53/90-17-41	12/31/2003
Meridian (Forest), MS	Off US Highway 80 Forest, MS 32-21-48/89-25-29	02/02/2003
Philadelphia, MS	104 Magnolia Street, Neshoba County, Philadelphia, MS 32-47-12/89-04-48	08/31/2003
Columbus (Starkville), MS	4 mi W Fire Tower Rd off US 45 Columbus, MS 33-20-40/88-32-47	04/01/2002
Columbus (Louisville), MS	0 2 km S of SR-15 & SR-397, Louisville, MS 33-06-45/89-02-53	04/30/2003
Columbus (Eupora), MS	0 8 km NW of Eupora, MS 33-33-07/89-17-10	04/30/2003
Winston-Salem, NC	310 West 4 <sup>th</sup> Street, First Union Building Winston-Salem, NC 36-05-51/80-14-51	Month-to-month
Scottsbluff, NE	3 km North of Scottsbluff, NE 41-56-28/103-39-23	10/31/2002
Portsmouth, NH	Lafayette Road, Portsmouth, NH 43-03-11/70-46-02	05/31/2002
Northern New Jersey (Dunellen), NJ	99 Beaviour Avenue, Northern (Summit), NJ 40-42-42/74-21-12	Month-to-month
Rochester, NY	935 Thayer Road Fairport, NY 14450	07/31/2004

	43-02-08/77-25-23	
Syracuse, NY	Onandaga County, Otisco, NY 42-52-50/76-11-45	01/31/2003
Pittsburgh, PA	2850 Burthold Street, Pittsburgh, PA 15213 40-26-46/79-57-51	01/31/2002
Ft Worth, TX	Burnett Plaza 801 Cherry Street Fort Worth, TX 32-45-01/97-20-04	04/09/2004
Dallas, TX	901 Main Street 32-46-48/96-48-13	04/30/2003
Wharton, TX	113 Horton Road, Wharton, TX 29-16-54/96-02-28	04/17/2003

## **Exhibit III.8**

### EXHIBIT III. 8

(d) Nextel Spectrum Acquisition Corp is a wholly-owned subsidiary of Nextel Communications, Inc. The following parties have a beneficial ownership interest (as defined by the U.S. Securities and Exchange Commission) of 5% or more in Nextel Communications, Inc, as of June 30, 2003

#### Legg Mason

Legg Mason, Inc has a beneficial ownership of 9.1% in Nextel Communications, Inc.

#### **Name and Address:**

Legg Mason, Inc  
100 Light Street  
Baltimore, MD 21202

#### **Authorized contact:**

Scott Labin  
Legg Mason Funds Management  
100 Light Street  
Baltimore, MD 21202

#### Motorola, Inc.

Motorola, Inc. has a beneficial ownership of 8% in Nextel Communications, Inc

#### **Name and Address:**

Motorola, Inc.  
1303 East Algonquin Road  
Schaumburg, Illinois 60196

#### **Authorized contact:**

Mr. Keith J Bane  
Motorola, Inc  
1303 East Algonquin Road  
Schaumburg, Illinois 60196

Nextel Spectrum Acquisition Corp. is unable to provide information regarding any ownership interest the entities listed above may have in companies licensed to provide cable services. For the Commission's convenience, we have provided contact names and addresses above. To the extent the Commission requires information concerning whether the entities listed above have an ownership interest in companies providing cable services, the contacts listed above should be able to provide the Commission with such information.

## **Exhibit III.9**

## **Exhibit III.9**

9(a)

Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

## **Exhibit III.10**

## PUBLIC INTEREST STATEMENT

### I. INTRODUCTION

Nextel Spectrum Acquisition Corp (“Assignee”) and WorldCom Broadband Solutions, Inc (debtor-in-possession) (“WBS”) and various affiliates of WBS<sup>1</sup> (collectively, “Assignors”) hereby request authority, pursuant to section 310(d) of the Communications Act of 1934, as amended,<sup>2</sup> for approval of assignment of various wireless licenses from Assignors to Assignee (the “Assignment Applications”). The licenses subject to this proposed assignment (“Licenses”) are in the following services: Multipoint Distribution Service (“MDS”), Multichannel Multipoint Distribution Service (“MMDS”), Wireless Communications Service (“WCS”), point-to-point microwave, 800 MHz land mobile radio service, cable television relay service (“CARS”), and satellite receive-only earth stations. As described below, the proposed assignment complies with the Commission’s rules and will serve the public interest.

### II. DESCRIPTION OF THE APPLICANTS

#### A. The Assignors

The licenses that are the subject of the Assignment Applications are held by WBS, a Delaware corporation, and the following entities, each of which is directly or indirectly controlled by WorldCom, Inc (debtor-in-possession) (“WorldCom”), a Georgia corporation. CS Wireless Systems, Inc. (debtor-in-possession), a Delaware corporation, and Wireless Video Enterprises, Inc. (debtor-in-possession), a California corporation. In

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<sup>1</sup> See, *infra*, Section I A

<sup>2</sup> 47 U S C § 310(d).

July and November 2002, WorldCom and substantially all of its active U.S. subsidiaries, including the Assignors, filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code to reorganize their business and financial structure. As a result of the bankruptcy filing, WorldCom filed for Commission approval, *inter alia*, of the involuntary *pro forma* assignment of the wireless licenses held by Assignors to the Assignors as debtors-in-possession in July and August of 2002. The Commission granted these applications.<sup>3</sup>

The Assignors currently provide fixed wireless broadband data services to approximately 1400 small and medium sized business customers in 13 markets.<sup>4</sup> Service offerings range from symmetrical 384 kbps to 1.5 Mbps downstream/512 kbps upstream.

All of the licenses, including the MDS and MMDS licenses, are operated on a non-common carrier basis. Assignors have never elected to operate as a common carrier, and Assignor has not in fact operated as a common carrier. Rather, as described in more detail below, Assignors have offered service to their customers on an individualized basis, which comports fully with the Commission's Rules

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<sup>3</sup> See *Public Notice*, Report No. SES-00417 (Aug. 7, 2002); *Public Notice*, DA 02-3350 (Dec. 5, 2002), *Public Notice*, Report No. 3878 (Dec. 18, 2002).

<sup>4</sup> WBS plans to terminate its broadband data service to these 1400 customers on September 30, 2003. WBS has notified these customers of this planned termination of service by letter dated July 25, 2003. WBS customers may terminate service prior to September 30 without incurring an early termination penalty, and WBS will work to provide customers with alternative means of obtaining broadband access. WBS will file the appropriate notification with the Commission seven days prior to the termination of service. Because the Licenses are not operated on a common carrier basis, the provisions of Sections 21.910 and 27.66(b), 47 C.F.R. §§ 21.910, 27.66(b), do not apply to WBS's planned termination of service. WBS and Nextel are aware of the Commission's service requirements and will provide services consistent with the FCC's rules prior to and after closing of the assignment applications.

In particular, Section 21.903(b) of the Commission's Rules provides that "Multipoint Distribution Service stations may render any kind of communications service consistent with the Commission's rules on a common carrier or non-common carrier basis."<sup>5</sup> The Commission and courts have long recognized that a common carrier "offers service indiscriminately to the general public," whereas private carriers "make individualized decisions regarding the terms and conditions of their service offerings."<sup>6</sup> That is, while common carriers indiscriminately serve the public, private carriers are "free to determine to whom, and on what terms, service will be offered" even if services are offered on a subscription basis.<sup>7</sup>

Assignors have not indiscriminately held out their service offerings to the public. Nor have Assignors ever filed a tariff for their services. Instead, Assignors negotiate individualized service contracts with their customers.

#### **B. The Assignee**

Assignee, a Delaware corporation, is a wholly owned subsidiary of Nextel Communications, Inc. ("Nextel"), a Delaware corporation. Nextel currently provides commercial mobile radio service ("CMRS") in some 400 cities in the U.S. serving over eleven million subscribers, and is one of at least six CMRS providers with a national

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<sup>5</sup> 47 C.F.R. § 21.903(b)

<sup>6</sup> See, e.g., *In the Matter of Request for Extension of Waiver of Mobil Oil Telecom, Ltd.*, Order, 5 FCC Rcd 5812, ¶ 2 (1990); See also *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976).

<sup>7</sup> See, e.g., *In the Matter of Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services*, Report and Order, 7 FCC Rcd. 1630, ¶ 54 (1992).

footprint.<sup>8</sup> Nextel has invested more than \$7 billion to establish a national digital network to provide a full range of wireless communications services in competition with other CMRS providers. Nextel's digital CMRS service integrates in a single mobile handset a digital dispatch service (known as Nextel Direct Connect<sup>(sm)</sup>) with interconnected mobile telephone service, Internet access, short messaging and mobile data service.<sup>9</sup> By offering this integrated package of services, Nextel has become a significant competitor to the established CMRS carriers throughout the U.S. and continues to compete successfully in the provision of CMRS services.

### **III. DESCRIPTION OF THE TRANSACTION**

On June 3, 2003, WorldCom received bankruptcy court approval to conduct an auction to sell certain assets, including the rights in and to the Licenses held by the Assignors. This auction was held on June 26-27, 2003, and following its conclusion, WorldCom determined that the Assignee had submitted the highest and best offer in the auction. The Assignors and Assignee subsequently entered into an Asset Purchase Agreement, dated July 8, 2003, for the sale of substantially all of the assets of the Assignors, including the rights in and to the Licenses, to Assignee for \$144 million in cash and non-cash consideration consisting of a three year extension of a customer contract between subsidiaries of WorldCom and Nextel. On July 22, 2003, the

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<sup>8</sup> See *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighth Report, FCC 03-150, WT Docket No. 02-379, ¶ 40 (released July 14, 2003) ("Eighth CMRS Competition Report").

<sup>9</sup> Nextel's Direct Connect is a significant advancement over traditional analog dispatch services because it expands the typical dispatch service coverage area, uses the spectrum more efficiently, and provides extra security through the use of digital technology.

bankruptcy court entered an Order approving, among other things, the terms and conditions of the Asset Purchase Agreement, as modified in certain respects. Attached as Exhibit II 6 to FCC Form 305 is a copy of the Asset Purchase Agreement.<sup>10</sup> The Assignors and the Assignee now seek Commission consent to the assignment of the Licenses to Assignee as contemplated by this Agreement.

#### **IV. THE PROPOSED ASSIGNMENT COMPLIES WITH THE COMMISSION'S RULES AND WILL SERVE THE PUBLIC INTEREST**

##### **A. The Proposed Transaction Will Enhance Nextel's Ability to Offer New Digital Wireless Services to Consumers**

Although Nextel is still in the process of developing specific business and technical plans for the use of the Licenses, the proposed assignment would provide it with additional spectrum capacity and flexibility to expand its digital wireless services and 3G mobile innovations. Nextel has engaged in a number of transactions to acquire spectrum licenses over the past ten years. Nextel has often taken underutilized spectrum (particularly SMR spectrum), invested significantly in technology, and increased the number of subscribers supported on the spectrum by orders of magnitude. Nextel plans to apply the expertise it has gained in these prior transactions to the spectrum rights it proposes to acquire here. Much of the spectrum the Commission has allocated for MDS and MMDS has been underutilized over the past several years. Nextel is an industry leader in developing and providing innovative wireless products, services, and solutions, and will apply this same leadership, along with its technical expertise in developing underutilized spectrum, to the MDS and other spectrum rights it would acquire under the

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<sup>10</sup> The parties have included with the Asset Purchase Agreement all of the publicly available schedules. The other schedules, which contain sensitive commercial information, were filed under seal with the Bankruptcy Court.

proposed assignment.<sup>11</sup> The proposed transaction will enhance consumers' competitive alternatives by furthering Nextel's ability to offer a greater menu of the wireless services consumers are demanding in today's marketplace, thus furthering the Commission's goals of maximizing the efficient use of the spectrum and promoting competition. The Wireless Telecommunications Bureau has recognized that Nextel's deployment of efficient digital technologies provides a direct public interest benefit, and the addition of Assignors' spectrum will enhance Nextel's ability to continue this trend.<sup>12</sup>

The Commission has issued a Notice of Proposed Rulemaking ("*MDS/ITFS NPRM*") that proposes substantial changes to the rules governing MDS, MMDS, and Instructional Television Fixed Service ("*ITFS*") licenses.<sup>13</sup> These proposed changes will have a significant impact on the use of these licenses, whether by Nextel or any other licensee. The *MDS/ITFS NPRM* (at §§ 49-57, 98-106) seeks comment on realigning the MDS and ITFS bands and the appropriate mechanism for transitioning incumbent

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<sup>11</sup> Although MDS Channels 1 and 2 and the other MDS and MMDS channels are located in different spectrum bands (2.1 GHz and 2.5 GHz), Nextel currently has no plans to treat the MDS and MMDS spectrum rights it would acquire under the proposed transaction differently for purposes of offering services to customers.

<sup>12</sup> *In re Applications of Putencrieff Communications, Inc. Transferor, and Nextel Communications, Inc. Transferee, For Consent to Transfer Control of Putencrieff Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8935, ¶ 65 (WTB 1997), *In re Applications of Chadmoore Wireless Group, Inc. and Various Subsidiaries of Nextel Communications, Inc.; For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 16 FCC Rcd 21105, ¶ 19 (2001); *In re Applications of Pacific Wireless Technologies, Inc. and Nextel Of California, Inc. For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 16 FCC Rcd 20341, ¶ 18 (2001)

<sup>13</sup> *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 18 FCC Rcd 6722 (2003).

licensees to the realigned band plan. Nextel has acquired substantial experience that would prove quite useful in such a transitioning process. In particular, over the past five years, Nextel has relocated numerous incumbent licensees in the 800 MHz band to clear SMR channels for CMRS use in Economic Areas throughout the country. Grant of the Assignment Applications would permit Nextel to apply this experience to the planning and implementation of the Commission's proposed realignment of the MDS and ITFS bands. This, in turn, would help advance the *MDS/ITFS NPRM's* goals of promoting competition, innovation and investment in these bands.<sup>14</sup>

**B. The Proposed Assignment Will Have No Anticompetitive Effects**

The proposed license assignments raise no competition issues because the Assignors and the Assignee compete in different product markets. As described above, Assignors offer *fixed* wireless broadband data services to small and medium-sized businesses on a non-common carrier basis, while Nextel offers CMRS.<sup>15</sup> These different services are not reasonable substitutes for each other. A consumer seeking a CMRS provider clearly does not view the fixed services currently offered over the Licenses as an option, while a business customer seeking a broadband data service does not view

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<sup>14</sup> *MDS/ITFS NPRM* ¶ 1

<sup>15</sup> The Commission has previously treated CMRS providers as part of a single product market. See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988, ¶¶ 37 *et seq.* (1994), see also *Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation*, Order, 10 FCC Rcd 3361, ¶ 27 (WTB 1995), *In the Matter of Applications of Motorola, Inc. For Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Order, 10 FCC Rcd 7783, ¶ 17 (WTB 1995). Moreover, Congress created the CMRS classification of mobile services in 1993 due to the convergence of numerous private and common carrier mobile services, such as cellular, 800 MHz SMR and 900 MHz SMR, that were fulfilling similar consumer needs through similar service offerings. *Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, 107 Stat. 312 (1993)

Nextel's current mobile telecommunications services as an option. Indeed, in its most recent report regarding the deployment of advanced telecommunications services, the Commission listed cable modem service, DSL, optical technologies, terrestrial fixed wireless services (including MDS and WCS), and satellite services as "last mile" high-speed data technologies, but did not include CMRS in this list of competitors.<sup>16</sup>

Even assuming the Assignors and the Assignee competed in the same product and geographic markets, the proposed transaction would not raise competition concerns. The Commission has found that "there is effective competition in the CMRS marketplace," including in rural areas.<sup>17</sup> Nextel's acquisition of Assignors' rights in the Licenses clearly will not diminish this robust competition in any area. The Assignors have no mobile telecommunications service customers, and have only 1400 fixed wireless customers in 13 markets – well under one tenth of one percent of the total number of high-speed data subscribers in the business sector.<sup>18</sup> Moreover, although Nextel intends

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<sup>16</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, 17 FCC Rcd 2844, ¶¶ 42-60 (2002) ("2002 Advanced Services Deployment Report"). In this report, the Commission defined a "high-speed" data service as providing a downstream or upstream transmission speed of more than 200 kilobits per second ("kbps"). *Id.* ¶ 9. Although CMRS carriers, including Nextel, offer mobile data services, the data rates of these services currently fall below 200 kbps. *See Eighth CMRS Competition Report* ¶ 18 (mobile telephone carriers offer mobile data services at "data transfer speeds typically ranging from 30 to 70 [kbps] per second..., with maximum data rates of up to 144 kbps for some carriers")

<sup>17</sup> *Eighth CMRS Competition Report* ¶¶ 12-13.

<sup>18</sup> *See 2002 Advanced Services Deployment Report* ¶¶ 30-31 (reporting that, as of June 30, 2001, there were a total of approximately 7.8 million high-speed residential subscribers and 1.8 million high-speed lines in service to large business and institutional customers)

to use the Licenses to provide innovative services to customers, the current band plan and technical rules governing the MMDS spectrum, which makes up a significant portion of the Licenses, makes the provision of such services difficult. As the Commission has recognized in the pending proceeding that proposes to revise these rules, “the existing regulatory structure has limited the ability of operators to deploy two-way services and made it nearly impossible to provide mobile services.”<sup>19</sup>

**C. The Assignee Is Qualified to Hold the Licenses**

The Assignee is legally, financially, technically, and otherwise qualified to hold the Licenses. The Assignee is not a cable operator, and therefore the proposed transaction does not implicate the cable-MDS cross-ownership provisions set forth in section 613 of the Act and section 21.912 of the Commission’s rules.<sup>20</sup> The proposed Assignment will also comply with the foreign ownership provisions of section 310 of the Act and section 21.4 of the Commission’s Rules.<sup>21</sup>

**V. PROCEDURAL ISSUES**

**A. Sections 1.935 and 21.29 of the Rules**

In response to objections raised in the bankruptcy proceeding by various ITFS and MMDS licensees (“Spectrum Lessors”) who have entered into excess capacity agreements with WBS or its affiliates, WorldCom and Nextel amended the Asset Purchase Agreement on July 22, 2003 to modify, among other things, Sections 7.26 and 7.29 of the Agreement (the “Modifications”). See Appendix A hereto. The Modifications

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<sup>19</sup> *MDS/ITFS NPRM* ¶ 2 n 3

<sup>20</sup> 47 U.S.C. § 533(a), 47 C.F.R. § 21.912

<sup>21</sup> 47 U.S.C. § 310, 47 C.F.R. § 21.4

expanded and clarified the rights of the Spectrum Lessors to access certain equipment and towers used or useful for their operations

In exchange for WorldCom and Nextel agreeing to make the Modifications, the Spectrum Lessors agreed to withdraw their objections in the bankruptcy court. There was no other consideration, cash or non-cash, given by WorldCom or Nextel to the Spectrum Lessors, or from the Spectrum Lessors to WorldCom or Nextel. Further, there was no written or verbal agreement between the Spectrum Lessors and WorldCom or between the Spectrum Lessors and Nextel that would prohibit the Spectrum Lessors from filing petitions to deny, informal objections, or any other pleading at the Commission regarding the Assignment Applications. As a consequence, sections 1.935 and 21.29 of the Commission's rules, which govern agreements to dismiss FCC pleadings in certain cases, are not applicable.<sup>22</sup>

**B. WorldCom Reorganization Transaction**

WorldCom and its subsidiaries (as debtors-in-possession) have filed applications ("Reorganization Applications") to assign various FCC authorizations and licenses, including the Licenses, to these subsidiaries operating under the newly reorganized MCI, Inc. ("Reorganized Entity") as part of its emergence from Chapter 11 bankruptcy. The Commission placed these Reorganization Applications on Public Notice on July 9, 2003.<sup>23</sup>

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<sup>22</sup> In an abundance of caution, Nextel and WorldCom are providing Declarations from each party that certify that there was no consideration given by WorldCom or Nextel to the Spectrum Lessors, or from the Spectrum Lessors to WorldCom or Nextel. Those declarations are attached at Appendix B

<sup>23</sup> *Public Notice*, DA 03-2193, WC Docket No. 02-215 (released July 9, 2003).

As contemplated by the July 9, 2003 Public Notice (at note 12), the Assignment Applications to assign the Licenses from the Assignors (as debtors-in-possession) to the Assignee are being filed during the pendency of the Reorganization Applications. The Assignors and the Assignee request that the Assignment Applications be accepted for filing and processed separately from the Reorganization Applications. As provided in the July 9, 2003 Public Notice, upon grant and consummation of the Assignment Applications, WorldCom will amend its Reorganization Applications to remove the Licenses from that proposed transaction to the extent the Reorganization Applications are still pending before the Commission. In the event the Reorganization Applications are approved and consummated prior to the grant of the Assignment Applications, the Assignors will file any necessary amendments to the Assignment Applications to reflect the assignment and/or transfer of the Licenses to the Reorganized Entity. In such an event, the Assignors and the Assignee request a blanket exemption from any applicable cut-off rules so that any such amendment to the Assignment Applications would not be treated as a major amendment requiring a second public notice period. Treatment of these applications in this manner would be consistent with prior FCC decisions regarding the processing of assignment or transfer applications that are affected by larger transactions undertaken for legitimate business purposes.<sup>24</sup>

**C. New Authorizations, Construction Permits, and Pending Applications**

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<sup>24</sup> See, e.g., *In the Matter of Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, ¶ 45 (WTB 1997), *In the Matter of Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶ 137 n.300 (1994), *In the Matter of Application of Centel Corp and Sprint Corp.*, Memorandum Opinion and Order, 8 FCC Rcd 1829, ¶ 23 (CCB 1993)

The Assignors have on file applications for new or modified facilities and may file for additional authorizations for new or modified facilities, which may be granted during the pendency of the Assignment Applications. Accordingly, the Assignors and the Assignee request that the Commission's grant of the Assignment Applications include authorization for the Assignee to receive assignment of: (1) any authorizations issued to the Assignors in the following services: MDS, MMDS, WCS, point-to-point microwave, 800 MHz land mobile radio service, CARS, and satellite receive-only earth stations from the date of the Assignment Applications until the consummation of the transaction following Commission approval, (2) construction permits held by the Assignors that mature into licenses after closing and that may have been omitted from the Assignment Applications, and (3) applications that have been, or which may be, filed by the Assignors and that are pending at the time of consummation of the transaction. Such action would be consistent with prior decisions of the Commission.<sup>25</sup>

## VI. CONCLUSION

For the reasons stated above, the assignment of the licenses to the Assignor will comply with the Commission's rules and serve the public interest. The Assignors and the Assignee consequently request that the Commission grant the Assignment Applications.

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<sup>25</sup> See, e.g., *AT&T-MediaOne Merger Order*, 15 FCC Rcd 9816, ¶ 185 (2000), *In the Matter of Applications of PacifiCorp Holdings, Inc and Century Telephone Enterprises, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, ¶¶ 45, 47 (WTB 1997), *In the Matter of Applications of Pacific Telesis Group and SBC Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, ¶ 93 (1997); *In the Matter of Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶ 137 n 300 (1994).