rates anticipated at 400-600 kbps, and peak uplink rates of 1.8 mbps, with average uplink user data rates from 300-500 kbps.[58]

To accomplish their next-generation goals, the Applicants plan to migrate to an all-IP network architecture. Because 1xEV-DO Rev. A offers end-to-end IP connectivity for both data and voice, regardless of the type of access used, the Applicants plan to make an evolutionary migration toward that standard, as discussed above. 1xEV-DO Rev. A supports exceptional call setup times, provides excellent service quality, and can be deployed to the market in a competitive time frame. 1xEV-DO Rev. A also has ideal characteristics as a platform for a high performance push-to-talk feature over CDMA, and Sprint Nextel will deploy the push-to-talk feature using the 1xEV-DO Rev. A platform. Sprint's and, upon closing of the merger, Sprint Nextel's technology teams will be performing technical due diligence and trials of 1xEV-DO Rev. A in late 2005 through mid-2006. Network upgrades are expected to begin in late 2006 or early 2007 and should be completed in late 2007 or early 2008.[59]

3. Sprint's Global Wireline Network Will Complement And Strengthen Sprint Nextel's Wireless Network.

The combination of Nextel's wireless assets with Sprint's wireless facilities and its U.S. and global fiber network will yield merger-specific benefits. Nextel will be able to move traffic from third party carriers to Sprint Nextel's own facilities, offering significant cost savings and service quality improvements. Sprint's fiber network is extensive and robust. Its U.S. network

---

58 Valente/West Declaration Attach. 1, ¶ 11.

59 *Id.* Attach. 1, ¶ 13. Although our discussion here has focused on the CDMA network, the Applicants intend to continue expanding the coverage and capacity of the iDEN network through 2007. These improvements should also reduce subscriber churn and thereby contribute to the merged company's lower costs of acquiring and retaining subscribers.

consists of more than 34,000 physical route miles of fiber optic cable, while the global network consists of over 75,000 route miles of fiber, including an ownership stake in major public undersea cable systems. The U.S. network is an integrated infrastructure based on Dense Wave Division Multiplexing ("DWDM") and Synchronous Optical NETwork ("SONET") backbone, while the global network is an integrated infrastructure that includes elements of Sprint's wholly owned network and partner networks. These infrastructures support IP, ATM, Frame Relay, and TDM services with flexible mix-and-match architecture for smooth migration to future technology. In addition, Sprint has been developing integrated wireline/wireless products for its enterprise customers. Sprint Nextel will be able to offer both the Sprint wireline portfolio and the integrated solutions to Nextel's base of business customers.

B. The Merger Will Enhance Sprint Nextel's Incentive And Ability To Position Itself As A Strong Intermodal Competitor, Which Will Significantly Benefit Consumers.

With the wireless and wireline fiber assets described above herein and further below, Sprint Nextel will emerge from the proposed merger as a formidable competitive force with every incentive to optimize the wireless future.[60] Nextel and Sprint are industry-leading companies in technological innovations and data solutions. These differentiating characteristics will position the combined company as a strong and innovating competitor. The combined company will lack any material ILEC local wireline business restraint on its competitive strategy, and, with its wireless focus, Sprint Nextel will be a true competitive alternative to wireline local telephony. In contrast, the two largest providers of wireless services, Verizon

---

60 *See* Sections I(B) and II(C)(3). Indeed, access to Sprint's MANs will allow the merged company to bypass ILEC facilities in several areas of the country, thereby reducing the company's access costs.

Wireless and Cingular, are motivated to develop wireless strategies, including the pricing and marketing of their wireless services, that will maximize the overall returns of their parent companies. As stated in the CRA Analysis:

> Relative to an independent wireless provider, an ILEC-affiliated wireless provider has less incentive to lower wireless prices in areas in which it is the local exchange carrier. This is because lower wireless prices encourage some wireline customers to switch to wireless service, which reduces wireline profits.[61]

This inevitably includes consideration of potential adverse effects on the value of their parents' substantial ILEC operations.[62]

Indeed, in assessing the competitive effects of Cingular's acquisition of AT&T Wireless, the Commission weighed the likely impact of that transaction on intermodal competition.[63] In its analysis, the Commission noted that Cingular's "strategies are influenced by SBC's and BellSouth's concerns about wireline revenues and access lines."[64] Given that Cingular was proposing to merge with the largest independent wireless carrier, AT&T Wireless, the Commission concluded that "[i]t is likely that Cingular's acquisition of AT&T Wireless will have some impact on the development of intermodal competition."[65] In contrast, the Sprint

---

61 CRA Analysis ¶ 69.

62 *Id.* ("Thus, an ILEC-affiliated wireless provider would only value the *incremental* profits associated with a wireline-to-wireless switch, whereas an unintegrated wireless provider would value the *total* profit from having a new subscriber to its wireless service.") (emphasis original). The CRA Analysis notes that this adverse incentive holds even if substitution between wireless and wireline is limited to secondary lines and the two products comprise distinct relevant antitrust markets. *See id.*

63 *Cingular Order* ¶¶ 237-250.

64 *Id.* ¶ 243.

65 *Id.* ¶ 245.

Nextel merger will promote intermodal competition. Just four months ago in the *Cingular Order*, the Commission classified Sprint as an independent wireless carrier, stating:

> [Sprint] operates as an incumbent LEC in a relatively small number of markets compared to its wireless footprint; it has significantly fewer local exchange access lines than wireless customers; and it derives a significantly larger portion of its revenues from its wireless operations than from its wireline operations. Sprint's local wireline operation has approximately 7.9 million access lines, whereas it has more than 20 million wireless subscribers.[66]

In 2003, Sprint's wireline ILEC operations were $6.1 billion out of $26.2 billion – only 23.4% of its annual revenues. Nextel, meanwhile, has no incumbent wireline operations. The combined company will position its services as a competitive alternative to wireline service, to the benefit of intermodal competition and consumers.

The Commission has long recognized the benefits of intermodal competition and has worked to create a regulatory environment that promotes such competition. In 2002, the Commission pointed to mobile phone usage trends that indicated that some consumers are using their mobile phones as replacements for wireline service,[67] and it found that "as more consumers choose to use wireless instead of wireline services, the inability to transfer their wireline number to a wireless service provider may slow the adoption of wireless by those consumers that wish to keep the same telephone number they had with their wireline service provider."[68] More recently,

---

66 *Id.* n.556. Even more conclusively, upon closing of the planned spin-off of Sprint's ILEC operations, Sprint Nextel will have no ILEC properties.

67 *See Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, Memorandum Opinion and Order*, 17 FCC Rcd 14972 ¶ 17 (2002) (describing wireless-wireline substitution levels almost three years ago).

68 *Id.* ¶ 18.

in the 2003 *Intermodal LNP Order*, the Commission reiterated that "[t]he focus of the [intermodal] porting rules is on promoting competition, rather than protecting individual competitors."[69]

In both the *Cingular Order* and the *Ninth CMRS Report*, the FCC noted that "intermodal competition is growing and wireless services may become a more significant direct competitor to wireline services for a larger portion of the mass market in the future."[70] In the *Ninth CMRS Report*, the FCC acknowledged consumers' growing tendency to substitute wireless service for wireline service. The Commission pointed to the "decrease in the number of residential access lines, a drop in long distance revenues, and a decline in payphone profits."[71]

The proposed merger will further this trend. Sprint Nextel will have a greater ability to compete for business that historically has gone to wireline companies.[72] Furthermore, as discussed below, the merger creates economies of scale and scope that will reduce costs and enable Sprint Nextel to offer a realistic, competitive alternative to a wider variety of customers.[73]

---

69 *See Telephone Number Portability, CTIA Petitions for Declaratory Ruling On Wireline – Wireless Porting Issues, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697 ¶ 27 (2003) (subsequent history omitted); Chairman Powell further explained that the intermodal LNP rules would "eliminate impediments to competition between wireless and wireline services. Seamless wireline-to-wireless porting is another landmark on the path to full fledged facilities-based competition." *See id.* at *Separate Statement* of Chairman Michael K. Powell.

70 *Cingular Order* ¶ 241.

71 *Ninth CMRS Report* ¶ 213 (footnotes omitted).

72 Moreover, as discussed more completely in Section II(E) below, Sprint Nextel's arrangements with other firms to offer second brand opportunities to use its networks also may compete with wireline offerings, further increasing intermodal competition.

73 *See also* CRA Analysis ¶¶ 5-21.

C. The Proposed Merger Will Create Economies Of Scale And Scope That Will Make The Combined Company A More Effective Competitor.

In its consideration of the public interest benefits of a proposed merger, the FCC reviews "whether the combined entity will be able, and is likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the combination."[74] The FCC requires that the claimed public benefits be merger-specific and verifiable.[75] The proposed transaction will produce the following significant efficiencies: (1) improved technology development and deployment; (2) improved network coverage; (3) cost savings from using its own network for traffic currently carried on other carriers' networks; (4) reduced equipment procurement costs; and (5) improved development of BRS spectrum services. In fact, as stated in the Montagner/Nielsen Declaration:

> [a]fter accounting for the costs of integrating the two companies as well as other merger-related costs, we estimate that the Sprint Nextel merger will result in total net synergies of approximately $12 billion on an after tax, net present value ("NPV") basis (inclusive of terminal value).[76]

The FCC has embraced economies of scale and scope like those demonstrated herein in its assessments of other transactions. For instance, the FCC found that the DirecTV/News Corp. merger was "likely to enable the merged entity to achieve certain economies of scale and scope, particularly in R&D, that absent the transaction the parties individually could not have

---

74 *Cingular Order* ¶ 201.

75 *See id.* ¶ 205.

76 Joint Declaration of Marc Montagner and Steve Nielsen, Attachment D ¶ 5 ("Montagner/Nielsen Declaration").

achieved."[77] Similarly, the Commission found that the combination of AT&T Broadband and Comcast was "likely to result in synergies and efficiencies resulting in significant cost savings" and was likely to "have a positive impact on deployment of broadband services."[78] The FCC also found that the combined entity's increased size would "spur new investment."[79] As the Commission explained:

> "[t]he merged company should have a greater ability to spread those fixed costs across a larger customer base, which should in turn foster incentives for investment by the merged entity, as well as other businesses that seek to sell equipment, technology, and services to the merged entity."[80]

The Sprint Nextel merger will lead to similar public interest benefits. As a combined entity, Sprint Nextel will enjoy efficiencies of scale and scope that are expected to improve service quality and lower the cost of serving an additional wireless customer and providing an additional minute of wireless service. As a result, the merger will yield a stronger and more efficient wireless competitor.[81] The FCC held in the *Cingular Order* that improved quality of service is a benefit that is "real to current and future consumers."[82] As a result, "better performance on the part of the combined entity has the potential to improve the competitiveness of the market as a whole" because competitors will be facing "a greater service-quality

---

77 *DirecTV Order* ¶ 344.

78 *AT&T-Comcast Order* ¶ 182.

79 *Id.* ¶ 184.

80 *Id.*

81 Montagner/Nielsen Declaration ¶ 7 ("[T]he estimated efficiencies resulting from the merger will enable Sprint Nextel to be more competitive in the future.").

82 *Cingular Order* ¶ 212.

competitive challenge."[83] Accordingly, improved performance by a combined Sprint and Nextel benefits all consumers, not just the current and future customers of Sprint Nextel.

Significantly, while the FCC found in the *Cingular Order* that Cingular and AT&T Wireless could remain separate entities and still fully realize some of their promised synergies,[84] this is not the case for Sprint and Nextel. As explained further below, Sprint and Nextel cannot achieve the synergies described herein as efficiently or effectively through such mechanisms as joint ventures or arm's length contracts.

1. The Proposed Merger Will Lead To Demonstrably Improved Technology Development And Deployment.

As a direct result of the proposed merger, Sprint Nextel will realize significant cost savings in the development and distribution of new technologies, and consumers will gain access to new services and technologies that would not have been available from Sprint or Nextel operating alone. The Applicants will avoid cost duplication in their development and deployment of new technologies, and, with a larger customer base, they will be able to undertake projects that would have been uneconomical (*i.e.*, unprofitable) for either to pursue alone.[85]

Absent the merger, Sprint and Nextel would separately pursue development and deployment efforts for more advanced technologies. Indeed, Sprint has been transitioning its network to advanced technologies, and Nextel was actively considering adding broadband data capability to its network using either a version of the CDMA standard or a next-generation,

---

83 *Id.*

84 *See, e.g.*, *id.* ¶ 213 ("[A]t least some of the network improvements... could have been achieved through investment into Cingular's network....").

85 CRA Analysis ¶¶ 18-19.

packet-switched mobile broadband technology.[86] Together, however, the Applicants anticipate that they will experience significant cost savings – a net present value of approximately $4.8 billion – while upgrading their combined networks.[87] These cost savings will be realized largely because Nextel can avoid spending billions of dollars to augment its iDEN network with broadband data capability. Instead, Nextel will be able to rely on the investment Sprint already has made in connection with its own effort to upgrade its network. Similarly, Sprint will be able to avoid costs that Nextel already has incurred in developing its push-to-talk feature for CDMA by working with Qualcomm to develop QChat.[88]

Sprint Nextel also will experience efficiencies in information technology and billing, customer care, and sales and marketing systems. The merged firm will be able to share future costs of developing innovations to these systems. In addition, the combined company will be able to take advantage of improvements that each firm already has made to these systems.[89] As

---

86 Montagner/Nielsen Declaration ¶ 9.

87 *Id.* ¶¶ 8-11.

88 *See* Valente/West Declaration Attach. 2, ¶ 11.

89 Sprint Nextel also will achieve savings from reduced handset costs and other equipment as a result of the merger. Montagner/Nielsen Declaration ¶ 25. "The combined entity will have increased purchasing volume, Nextel will have eliminated its primary-source dependence, and the worldwide volume of CDMA handsets will increase. All of these factors will combine to lower equipment costs to the benefit of consumers." Valente/West Declaration ¶ 43. The FCC has previously held that savings from decreased per-unit costs for handsets is a specific public interest benefit of a merger. *SBC Communications, Inc. and BellSouth Corporation; For Consent to Transfer of Control or Assignment of Licenses and Authorizations, Memorandum Opinion and Order*, 15 FCC Rcd 2459 ¶¶ 47-48 (2000) ("*SBC/BellSouth Order*"). Reduced procurement costs for handsets is a merger-specific benefit as the Applicants could not achieve the results acting alone.

discussed in the Montagner/Nielsen Declaration, the Applicants estimate that the net present value of these savings to be $4.4 billion.[90]

The savings the Applicants will realize as a result of the merger could not be achieved absent the merger. It would take longer and be more costly for Nextel, on its own, to supplement its current iDEN network with a broadband wireless network. Similarly, it would be unprofitable for the Applicants to undertake certain research and development projects on their own. In contrast, if they can share the costs of developing and deploying new technologies and the expense of implementing improvements to information technology and billing, customer care, and sales and marketing systems, the Applicants will have greater incentive to invest in those areas. As a result, the merged firm will achieve technologies and system improvements that are superior and more cost-effective than those that either applicant could achieve alone. These cost reductions and improvements in quality and technology all will redound to the benefit of consumers. Not only will Sprint Nextel customers benefit, but competitors may be spurred to match the offerings of Sprint Nextel as well, to the benefit of their customers.

There is no other mechanism available to the Applicants that is likely to yield the same benefits as a merger. In order to remain independent competitors and at the same time share costs, the Parties would have to devise mutually agreeable, highly complex contracts.[91] Such contracts are difficult to negotiate because of the complexity and unpredictability of many key contingencies.[92] For example, the Parties would need to devise a formula whereby they allocate

---

90 Montagner/Nielsen Declaration ¶¶ 23-25.

91 CRA Analysis ¶¶ 20-21.

92 *Id.* ¶ 22.

network costs, a point that is difficult to negotiate because it requires parties to agree on their relative benefits. In fact, Sprint and Nextel explored a joint effort to develop services for the BRS band; however, the Parties were unable to advance to a mutually agreeable arrangement.

Even if a contract can be reached between parties, not every issue that will arise thereafter can be easily remedied by the terms of the agreement. As a result, teaming arrangements can inevitably lead to disputes between parties, delaying the ultimate goals of the joint venture – to develop and deploy new and/or improved products and services.[93] Moreover, such delays increase the cost of new services and products for consumers.[94] Thus, there is no basis for concluding that Sprint and Nextel could achieve these cost savings through a joint venture.

2. Sprint Nextel Will Be Able To Provide Consumers Significantly Improved Network Coverage.

The customers of both companies will benefit from the fact that Sprint Nextel will have better service quality than the Applicants can currently offer as separate carriers. As described below, Sprint Nextel will be able to rationalize cell site coverage by reducing cell sites in some areas while filling coverage gaps in other areas with additional sites.[95] These factors will lead to improved signal strength and fewer dropped calls.[96]

---

93 *Id.* ¶ 23.

94 *Id.* ¶ 22.

95 CRA Analysis ¶¶ 26-29.

96 *Id.* The Applicants estimate that this improved service quality will reduce subscriber churn. "We estimate that these service coverage and quality improvements will improve overall customer satisfaction and reduce the combined company's customer churn rate." Montagner/Nielsen Declaration ¶ 26. As such, the costs incurred by Sprint Nextel to acquire and retain subscribers also will decline.

Following the merger, Sprint Nextel will be able to streamline the population of cell sites currently maintained by the separate companies.[97] Sprint Nextel will do so by collocating a significant number of existing and planned Sprint cell sites on existing Nextel sites. Sprint Nextel is expected to collocate approximately 80% of its planned CDMA sites over the 2005-2008 time period into existing Nextel sites. This will reduce the cost of cell site deployment and ongoing cell site expenses for the merged firm. Indeed, "Sprint Nextel will realize savings from lower construction costs due to the ability of the combined company to house CDMA base station electronics in existing Nextel sites and to expand and enhance coverage while avoiding building additional cell towers."[98] Also, the merger will allow the companies to take advantage of each entity's network coverage in geographic areas where the other is not as developed, thereby avoiding the duplication of cell sites in those areas.

The proposed transaction will result in a significant improvement of the in-building availability of the CDMA network.[99] By adding CDMA facilities to Nextel's existing cell sites, Sprint Nextel will be able to improve the quality of CDMA coverage, and consumers will quickly experience improved service quality, particularly inside buildings. As recognized in the *Cingular Order*, "[t]he increased effective capacity [of combining two companies' spectrum positions] should enable the merged entity to make progress in reducing the number of blocked, dropped, and marginal calls currently experienced by [their] customers."[100]

---

97 Montagner/Nielsen Declaration ¶ 12; *see also* CRA Analysis ¶ 29.

98 Montagner/Nielsen Declaration ¶ 12.

99 *Id.*

100 *Cingular Order* ¶ 210.

These benefits cannot be achieved without the merger. While Sprint and Nextel have attempted to overcome their respective coverage limitations through a combination of cell site sharing and roaming agreements, these efforts are more costly, and produce fewer benefits, than can be achieved through the merger.[101] First, cell site sharing can overcome some of the inefficiencies of serving areas with small numbers of subscribers, but such an approach "is often logistically difficult and, in any event, does not produce savings in equipment costs."[102] Second, roaming agreements are costly.[103] The FCC has found that roaming agreements are not as economical for a carrier as use of its own network facilities; the Commission has stated that a carrier's facilities can generate marginal cost reductions that "are likely to benefit consumers through lower price and/or increased service."[104] Sprint estimates that its per-minute cost for a roaming call is more than seven times the cost of a non-roaming call.[105] The merger will permit the combined firm to reduce these roaming costs, to the benefit of its subscribers and other consumers.

---

101 CRA Analysis ¶¶ 30-31. Indeed, Nextel has domestic, two-way roaming agreements only with Nextel Partners.

102 CRA Analysis ¶ 30.

103 *Id.* ¶ 31.

104 *Cingular Order* ¶ 219. *See also VoiceStream, Powertel, Deutsche Telekom Order* ¶ 121 (explaining that build-out and extension of VoiceStream's network "nationwide and internationally, constitute[d] a clear, transaction-specific public interest benefit." The FCC found that customers benefited from "potentially reduced roaming charges" in the United States and "from increased choices and competition in... international roaming services."); *SBC/BellSouth Order* ¶ 48 (finding that "new service plans, new features, and reduced charges (including charges for roaming) to consumers will result from the expansion of these two regional wireless [carriers] into one national company").

105 CRA Analysis ¶ 31.

3. Sprint Nextel Will Achieve Considerable Cost Savings By Using Its Own Network For Traffic Currently Riding Over Other Carriers' Facilities.

Sprint's wireline facilities will permit Sprint Nextel to carry traffic more effectively and efficiently, reducing the need to secure transmission services from third parties. Sprint Nextel's ability to shift wireless traffic to its own wireline facilities in those areas where it is more efficient to do so will give the company significant flexibility and strength.[106]

Following the proposed merger, a greater proportion of the minutes of service sold by Sprint Nextel will become "on-network." As a result, the combined company will be able to "avoid some of the interconnection charges that they currently pay to ILECs for completing calls that transit between the separate Sprint and Nextel networks."[107] Just as in the case of lower roaming costs, this reduction in interconnection charges should benefit consumers, since carriers can pass through such cost savings to consumers in the form of lower prices. Indeed, Messrs. Montagner and Nielsen state, "we expect that, post-closing, subscribers of the new company will be able to migrate toward more competitive rate plans offered by the combined company - a significant benefit to consumers."[108]

Sprint has estimated that the per-minute cost of a call from one of its subscribers to someone off its network is approximately 19% greater than the per-minute cost of a call between

---

106 *See 2005 Wireless Outlook: Broadband Networks Arrive*, Rudy Baca, Precursor (Jan. 19, 2005) (Sprint's "wireline backbone increases the efficiency of the likely dual-band network....").

107 CRA Analysis ¶ 32.

108 Montagner/Nielsen Declaration ¶ 26.

two Sprint PCS subscribers.[109] After the merger, any call between Sprint Nextel customers will be on the merged company's network and will not need to be interconnected by an ILEC. Thus, the increase of on-network calls is a specific benefit related only to the merger and cannot be replicated by any other method. It would be extremely difficult to negotiate with ILECs for lower interconnection charges, especially with those ILECs who own competing wireless carriers.

Sprint Nextel will also experience a significant reduction in backhaul costs as a result of the merger. After the merger, a substantial proportion of Nextel's backhaul traffic will be shifted from facilities currently leased from other carriers to Sprint's wireline network.[110] As discussed above, Sprint's wireline network is extensive and offers redundancy. Importantly, it includes Sprint-owned MANs in 30 markets across the United States. The MANs will enable Sprint Nextel to bypass much of the incumbent local exchange carriers' transport facilities in several areas of the country. Moreover, MANs extend SONET rings to ILEC end offices and PCS switches. As a result, MANs reduce access costs, provide access redundancy, and extend the reach of the network within the "last mile" of customers. As a result, the network can better serve local areas where service demand is high.[111]

---

109 CRA Analysis ¶ 33.

110 Montagner/Nielsen Declaration ¶ 21; CRA Analysis ¶ 39.

111 In addition, the network is able to provide ubiquitous service availability using SONET throughout the U.S. network. There are 505 SONET rings in the core long distance network and 369 points of presence nationwide reaching all major markets in which all services are available.

The incremental cost of carrying Nextel's traffic on the Sprint wireline network is lower than the price currently paid by Nextel.[112] Such savings cannot be attained but for the proposed merger, since it is highly unlikely that Nextel on its own could realize a comparable cost reduction. While pricing inefficiencies sometimes can be eliminated in arms-length contracts, it is often difficult to do so in practice because usage of leased networks cannot be predicted accurately.[113]

D. The Sprint Nextel Merger Will Promote Development Of Wireless Interactive Multimedia Services.

One of the most significant public interest benefits produced by the Sprint Nextel merger involves the accelerated deployment of wireless interactive multimedia services using the 2.5 GHz band. As the Commission recognized when it changed the 2.5 GHz band plan, a great deal of effort will be required to realize the band's potential. Owing to their licenses and leases in the band, their experience in developing new services, their existing portfolio of wireless products, and their financial strength, Sprint and Nextel individually are well-positioned to address the challenges inherent in the FCC's new 2.5 GHz regulations. When these assets and capabilities are joined in the new Sprint Nextel, the result will be a company with greater expertise and incentive to make the 2.5 GHz spectrum fully productive.

The combination of Sprint's and Nextel's 2.5 GHz band spectrum, personnel, and expertise will bring significant public interest benefits. Nevertheless, the realization of these benefits will require substantial investment, development, research, trial, and business risk, largely because the technology is evolving, key standard-setting processes are still underway,

---

112 CRA Analysis ¶ 39.

113 *Id.* ¶ 40.

and the regulatory environment that will govern the band remains unsettled in several critical respects.

While many elements of the business plan remain under development and subject to change, the goal of the combined company's nationwide service offering is to go beyond simply offering broadband access. The goal is to provide customers with integrated wireless solutions by incorporating devices, applications, and smart network technologies into an intuitive, easy-to-use service. This new service would generate economic growth and jobs in the United States by propelling the development of innovative applications and devices. The deployment of new wireless, interactive multimedia services has the potential not only to enrich the lives of millions of Americans through an enhanced, visual end-user experience, but also to increase productivity and reduce costs by providing the ability to access more information and more images simultaneously than ever before.

1. Past Regulatory Constraints And Inherent Spectrum Propagation Limitations Pose Obstacles To Using The 2.5 GHz Band.

The 2.5 GHz band remains saddled with a complicated assortment of incumbent licensees, each with different geographic areas, license holdings, and spectrum rights. As Commissioner Adelstein has observed, "[I]t is no secret that the BRS and ITFS services have had a tortured regulatory history."[114] The 2.5 GHz band, as Chairman Powell has noted, "has failed to emulate the success experienced by... other bands."[115] The Commission originally awarded licenses in this band to applicants on a channel-by-channel, site-by-site basis as an educational service and subscription television service in the 1960s and 1970s. The Commission divided the

---

114 *BRS Order*, Separate Statement of Commissioner Adelstein at 14384.

115 *BRS Order*, Separate Statement of Chairman Powell at 14380.

band among commercial Multipoint Distribution Service ("MDS") and non-commercial Instructional Television Fixed Service ("ITFS") licensees. The commercial and non-commercial operators envisioned a service that would transmit video programming to subscribers.

Based on the best technology available at the time, the Commission established a band plan that spaced channels within the band six megahertz apart and then interleaved different six-megahertz channels among the licensed channels. The rules effectively precluded any licensee from providing broadband service unless it sought and received consent from the licensee(s) of the interleaved channel group. Moreover, licensees often had to negotiate agreements with co-channel licensees in adjacent markets. These requirements hampered the ability of individual MDS and ITFS licensees to deploy data services. The interleaved nature of the 2.5 GHz band also thwarted deployment of more modern spread-spectrum techniques, which operate more efficiently and with less interference when licensees have access to large blocks of contiguous spectrum.

Beginning January 10, 2005, however, the Commission authorized "proponents" to commence a nearly five-year-long restructuring period for the 2496-2690 MHz band into upper- and lower-band segments for low-power operations, and a mid-band segment for high-power operations.[116] The new band plan has created opportunities for spectrum-based systems or devices to migrate to compatible bands based on marketplace forces and has reduced the likelihood of interference caused by incompatible uses. The Commission has stated that the new band plan also could provide new incentives for the development of low-power, low-site broadband uses of the 2.5 GHz band, which the legacy band structure had previously thwarted.

---

[116] The *BRS Order* also remains subject to pending petitions for reconsideration.

Despite these reforms, however, the Commission's decision has reaffirmed its longstanding prohibition of commercial ownership on the majority of the 2.5 GHz spectrum. Due to eligibility restrictions, approximately 120 MHz of this 2.5 GHz spectrum — approximately 62% of this band — remains ineligible for commercial licensing.[117]

Spectrum in the 2.5 GHz band also differs greatly from spectrum in the lower frequency bands. Other things being equal, the higher the frequency, the shorter the propagation distance of a radiofrequency signal. Several factors account for the diminished propagation paths of higher-frequency transmissions, including increased attenuation multipath fading and scintillation, tropospheric refraction and fading, and radio noise. The practical effect of these various factors, however, is simple: licensees that seek to deploy a low-site, low-power communications system must deploy more transmitters to cover the same area at 2.5 GHz than they would have to deploy at lower bands. Therefore, new entrants in the 2.5 GHz band must develop their own network deployment plans and either construct far more infrastructure than necessary in lower frequencies, or cover far less territory than consumers have come to expect. Moreover, the progressive weakening of radio signals in the 2.5 GHz band as they travel away from their point of origin limits the ability of signals to penetrate walls, floors, and ceilings in homes and offices. Also, from a purely technical perspective, the 2.5 GHz band suffers from not having a common technology that all providers use across the entire spectrum. Other factors notably absent from the 2.5 GHz spectrum include common control channels, standardized emission characteristics, and other common performance measurements. Collectively, these

---

[117] Although there is the possibility of commercial control of EBS, it is fairly limited and does not affect this analysis of the eligible spectrum in the band.

regulatory and technical impediments create substantial challenges for any carrier to operate in the 2.5 GHz band.

2. With A Nationwide Footprint, Sprint Nextel Will Have The Spectrum Resources Necessary To Make Intensive Use Of The 2.5 GHz Band.

Sprint and Nextel face considerable expense, effort, and risk in developing and deploying high-speed wireless interactive multimedia services in the 2.5 GHz band. At sufficient scale, the 2.5 GHz spectrum holds the promise of providing consumers integrated broadband access to high-speed data, video-on-demand, and interactive delivery services. To overcome the technical and operational limitations inherent in the 2.5 GHz band, however, licensees must develop innovative, technically sophisticated uses of the spectrum that differ from the types of services that are offered in lower-frequency bands. A combined Sprint Nextel will prove able to overcome these impediments more successfully than either company acting alone by sharing assets, expertise, personnel, investments, and technology.

As noted in the Rowley/Finch Declaration, the Applicants intend to deploy wireless interactive multimedia services using the 2.5 GHz band spectrum. The Applicants anticipate that these services would be extraordinarily fast with initial average downlink throughput rates of 2 Mbps to 4 Mbps per carrier.[118] Unlike CMRS offerings in the 800 MHz and 1.9 GHz bands, wireless interactive multimedia services over the 2.5 GHz band would be data-centric and focus on stationary and portable consumer electronic and computing-oriented devices and hardware. Wireless interactive multimedia services would enable consumers and business users to interact with high bandwidth applications through visual-centric services, such as video-on-demand, online gaming, document collaboration, and video conferencing. The Applicants would provide

---

[118] Rowley/Finch Declaration ¶ 5.

service to a nearly nationwide footprint, including many rural areas, and would offer high-speed, low-latency access to high-quality multimedia content at reasonable prices through a nearly national, wide-area radio network. The new system would likely deploy an end-to-end, all IP, including quality of service and security safeguards, and streaming video applications with seamless integration into a wide array of consumer-electronic devices.

One of the principal benefits of the merger is the creation of a nearly nationwide footprint in the 2.5 GHz band. Sprint holds spectrum rights in the 2.5 GHz band in 190 BTAs (on average 26.8 MHz licensed and 57.7 MHz leased), and Nextel holds spectrum rights in this band in 281 BTAs (on average 35.7 MHz licensed and 53.7 MHz leased).[119] Following the merger, Sprint Nextel's footprint in the 2.5 GHz band will extend to nearly 85% of the pops in the top 100 markets.[120] Significantly, technologies that would not have made economic sense for Sprint or Nextel to introduce regionally are more likely to be rolled out as part of a national network. Accordingly, consumers will have increased access to product offerings that would have likely been unavailable absent the merger, and they will receive better and more consistent service due to fewer coverage gaps. Essentially, the scale of their combined licenses and leases in the 2.5 GHz band significantly increases Sprint Nextel's ability to rapidly innovate and deploy new wireless interactive multimedia services.[121]

---

119 Sprint and Nextel lease 61.6% of the spectrum rights that they control within the BRS/EBS bands, many of which provide limited use rights.

120 Rowley/Finch Declaration ¶ 13.

121 *SBC/BellSouth Order* ¶ 48 (finding that "the creation of another *national* wireless competitor constitutes a clear, transaction-specific public interest benefit. A significant percentage of mobile phone users desire nationwide access, and those users will benefit significantly from the creation of another competitor with a near-nationwide footprint.... Further, we find the Applicants' arguments regarding cost savings have been reasonably

The proposed transaction also permits Sprint Nextel to construct a nationwide footprint in a more efficient fashion. To build national footprints individually, Sprint and Nextel would have been forced to acquire more spectrum through auctions, leases, or purchases. Because of the way this spectrum is licensed, this would have required an expensive piecemeal strategy with significant transaction costs. Through the merger, fewer costs will be passed on to consumers, allowing more Americans to take advantage of wireless interactive multimedia services.[122]

At the same time, combining Sprint's and Nextel's spectrum holdings does not materially increase the companies' spectrum rights in any given market because the two companies generally do not hold licenses or leases in the same geographic areas.[123] Both Sprint and Nextel hold BRS or EBS licenses or leases in only eighty-five out of 493 BTAs nationwide. In other words, the merger does nothing to change the combined company's 2.5 GHz position in 408 BTAs. In most of the BTAs where both carriers have a presence, however, one carrier covers only a minimal percentage of the MHz-pops in that BTA. Indeed, within the eighty-five BTAs where both carriers have some type of presence, the combination results in an average increase of only 4.3 percentage points on a MHz-pops basis. In only seventeen of those eighty-five BTAs

---

justified, and therefore count among the public benefits of this transaction.") (emphasis added).

122 The increased availability of wireless broadband to consumers brought about by the creation of Sprint Nextel will advance the Commission's clearly articulated goals. As Chairman Powell explained, "The wireless alternative will transform the marketplace by driving down the price of broadband services and expand access to underserved areas." Michael K. Powell, Chairman, Federal Communications Commission, Remarks at the Wireless Communications Association International (June 3, 2004), *available at* http://www.fcc.gov/commissioners/powell/mkp_speeches_2004.html.

123 Rowley/Finch Declaration ¶ 12.

will the merger increase the MHz-pops coverage of the combined entity by more than ten percentage points.

Moreover, spectrum in the 2.5 GHz band is encumbered, with approximately 62% of the band simply unavailable for commercial licensing. Because the Commission has maintained eligibility restrictions that prevent commercial operators from directly holding licenses for 120 MHz of the 2.5 GHz band (and even more in many major urban markets), system operators face significant transaction costs and risks associated with aggregating contiguous blocks of spectrum. In addition, while educators and non-profit institutions may choose to lease a portion of their licensed EBS spectrum to commercial operators, these leases are subject to Commission-mandated restrictions, and other businesses remain free to enter lease arrangements with individual educational institutions. Sprint Nextel will need to negotiate a large number of new leases with BRS and EBS license incumbents on the open market and must continuously negotiate renewals of existing leases that are already in place.

3. The Proposed Merger Will Lead To Improved Development Of Wireless Interactive Multimedia Services.

Sprint and Nextel will be able to combine their 2.5 GHz spectrum holdings to develop and deploy innovative high-speed data services. Because the geographic coverage of Sprint Nextel's 2.5 GHz operations will be larger than that of either of the merging parties, the merged firm will be able to offer services in the 2.5 GHz band to more consumers and, as a result, the investments made in the development of services in the band will tend to be more efficient.[124]

---

[124] CRA Analysis ¶¶ 42-45.

Consequently, the investment incentives of Sprint Nextel will be greater together than if they developed the 2.5 GHz band separately.[125]

In addition, as a result of the greater size of the network, there likely will be procurement savings in the merged entity's acquisition of network and subscriber equipment.[126] Also, suppliers of complementary services, such as application suppliers, are likely to find it more attractive to provide their products and services to Sprint Nextel than to either entity alone.[127] The expected result is that both the range and quality of services offered in the 2.5 GHz band will be improved due to the merger.[128]

These synergies are only possible through the proposed merger. As described in the Rowley/Finch Declaration, Sprint and Nextel attempted to enter into a joint venture whereby they would develop and deploy new services in the BRS band.[129] However, the Parties were not able to advance to a mutually satisfactory arrangement. Indeed, these joint venture negotiations instead served to highlight for Sprint and Nextel the potential benefits of the proposed transaction.

---

125 *Id.* ¶ 42.

126 *Id.* ¶ 43.

127 *Id.* ¶ 44.

128 *Id.*

129 Rowley/Finch Declaration ¶¶ 31-33.

4. The Proposed Merger Increases The Merged Company's Incentive To Undertake Aggressive Development And Ultimately Improves The Prospect That It Will Successfully Deploy Broadband Wireless Services In The 2.5 GHz Band.

By combining their BRS/EBS licenses and leases, Sprint and Nextel will be able to engage in more aggressive development efforts, in part because benefits will be realized over a larger customer base. Although the companies have not settled on a specific use for their BRS spectrum, the Applicants unilaterally have taken meaningful steps to recognize the band's potential.[130]

Combining Sprint's and Nextel's assets provides the financial flexibility to pursue opportunities that could have been prohibitively costly or risky for each company individually. Innovation in this band will be risky and expensive. As demonstrated by the tortured, forty-year history of the BRS/EBS band, for every potential idea or offering that makes it successfully to the mass market, many others do not. More research and development risks, however, can be undertaken by merging Sprint's and Nextel's resources. Losses, such as Sprint's write-down of its investment in BRS to $300 million in the third quarter of 2003, can be more easily spread across and absorbed by a larger entity. Moreover, it makes more sense for a combined Sprint Nextel to take these risks despite the possibility of incurring losses because the expanded customer base strengthens the possibility that Sprint Nextel will recoup research costs from new product offerings sooner.[131] As the Commission explained in the merger of AT&T Broadband and Comcast, "[t]he merged company should have a greater ability to spread those fixed costs

---

130 *See id.* ¶ 17.

131 *See DirecTV Order* ¶ 344 (finding that the merger would "likely... enable the merged entity to achieve certain economies of scale and scope, particularly in R&D, that absent the transaction the parties individually could not have achieved.").