

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Application for the Transfer of Control of Licenses) **WT Docket No. 05-63**
and Authorizations from Nextel Communications, Inc.)
and its subsidiaries to Sprint Corporation)

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments on the above-referenced applications for transfer of control.² Many of the licenses that are the subject of this proceeding are regulated under FCC rules pertaining to the Commercial Mobile Radio Service (CMRS) and will affect the state of competition among wireless carriers. RCA urges the Commission to consider the implications of consolidation in the wireless industry and the effects upon consumers’ ability to receive service outside the home market.

Introduction

RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services. Member companies offer service in more than 135 rural and small metropolitan markets where more than 14.6 million people reside in the United States. RCA members help to form the backbone of wireless services competition in America. The Commission should exercise its responsibility to preserve and promote consumers’ access to quality

1 RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

2 *Public Notice*, Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket 05-63, DA 05-502, February 28, 2005.

signal levels from a wide choice of providers throughout the United States.

A. The FCC Should Act to Ensure the Availability of Automatic Roaming for both Voice and Data Traffic in a Consolidating Industry

The proposed merger of Nextel Communications, Inc. and Sprint Corporation will create the third largest wireless communications company in the country. It will reduce consumers' choices among nationwide wireless carriers. The aggregated consolidation of the wireless telecommunications industry to five national carriers (AT&T/Cingular, Sprint/Nextel, Alltel/Western Wireless, Verizon Wireless and T-Mobile) will concentrate upon these carriers an extraordinary market power. The primary means by which the FCC can counter this effect and maintain a sharply competitive marketplace for wireless services is to express policies to strengthen the viability of small and mid-sized carriers.

RCA encourages the Commission to adopt measures that will maintain the availability of automatic roaming for consumers using wireless devices for voice, data and other applications. Without FCC action, the national carriers may exercise their new found market power to refuse to enter into reasonable roaming agreements with smaller carriers. Consumers will be denied access to signals outside their home areas, which will increase the likelihood of all consumers signing up with a national carrier rather than a local carrier.

RCA supports such initiatives as the Commission's collection of carriers' coverage maps and information on the availability of voice and data roaming.³ The information should prove useful in

³ *Public Notice*, "WTB Seeks Comment on CMRS Market Competition," WT Docket 05-71, DA 05-487, released February 24, 2005.

tracking trends that support RCA's position of concern for large carriers' control of the market for wireless services.

Whether as the result of findings in a survey of competition or of the review of the merger of the nations' two largest carriers, the FCC should issue a clear directive to large carriers of their responsibility to maintain and advance opportunities for roaming by entering into agreements with small carriers. Without such action by the Commission, rural areas would be exceedingly vulnerable to the monopolistic effects of the creation of super-sized carriers who are able to isolate rural or non-profitable areas into vacuums where no service is available, even though the local carrier is propagating signal useful to the wireless user. Whether by design or neglect, national carriers can deprive rural customers of service by failing to reach automatic roaming agreements with rural carriers. The Commission should exercise its oversight to encourage that reasonable terms for automatic voice and data roaming are reached among carriers. The object is to preserve the expectation by rural residents that when they roam outside their carrier's home territory, wireless services will be readily available to them. Such action will help to maintain the competitive landscape that is threatened with each formation of a larger carrier accompanied by the absorption of a smaller carrier.

Various regulatory options are available to the Commission to enforce and protect a competitive roaming marketplace. They include issuance of a policy statement in connection with any decision granting a merger such as the proposed Sprint/Nextel merger. The statement can encourage the new entity to actively negotiate with smaller carriers, in a fair and nondiscriminatory manner, to effectuate terms for roaming that will be attractive to rural customers who roam into the

newly combined service area of the merged entity. The Commission can issue and publicize decisions on complaints presented to it on the subject of refused or onerous roaming agreements being pushed by larger carriers onto smaller carriers. Forfeitures or other penalties could ensue for violation of the anti-discrimination provisions of Sections 201 and 202 of the Communications Act.⁴ If necessary, the Commission can go so far as to adopt rules prohibiting the imposition by national carriers of unilateral roaming terms and conditions upon small and mid-sized carriers.

In Attachment B of the Sprint/Nextel lead transfer application, the competitive analysis states, “[i]n any merger, the overall consumer impact depends on the relative magnitudes and likelihoods of anticompetitive harms and procompetitive benefits.”⁵ RCA could not agree more. The Commission has a duty to assess the overall effect of mergers on the marketplace, including the market for services to roamers. Receiving signal in roamer markets enhances the competition and the experience of users of wireless services. Failure among carriers to exchange provisions for automatic roaming detracts from the success of the wireless marketplace and diminishes consumer enthusiasm for the service. Promotion of good roaming policy by the Commission will benefit rural and non-rural consumers as they face the effect of carrier consolidation.

The anti-competitive effects of mergers must be attenuated by preserving the viability of small carriers across America. The entities must exist in order to offer competition and consumer choice. As people become more mobile, they become more dependent upon the mobility and reliability of their communications devices. Roaming access is a critical nutrient in the health of a

4 47 U.S.C. Sections 201 and 202.

5 Application File No. 0002031766, Attachment B, page 29.

nation whose people are increasing their use of wireless devices. Customers of small and rural carriers need to be able to roam seamlessly onto the network of larger carriers, and customers of large and urban carriers must be able to trust that their wireless service will not end at the edge of a metropolitan area. Roaming is essential to the circulation of the American population throughout the country.

B. The FCC Should Promote a Roaming Infrastructure that will Accommodate Future Wireless Services and Technologies

As the wireless industry matures and priorities shift, the Commission should continue to take actions to ensure that developing technologies will also be protected with the assurance that they will work outside the customer's home market. Wireless modems, PDAs and other devices will become more substantial users of spectrum, and thus greater factor in the business of wireless services. Rural carriers will participate in the development of new service offerings. The availability of roaming for new types of applications will be as important as it has been to date for voice communications. The Commission should support the development of new roamer technologies, and should encourage or demand the cooperation of large carriers with small carriers to advance the use of new wireless services wherever the customer may travel.

Conclusion

Small and mid-sized rural carriers such as the members of RCA ask the Commission to be mindful of the issue of the preservation and promotion of automatic roaming agreements between large carriers and their smaller co-carriers. As it considers the competitive effects of the Sprint/Nextel merger, and in other contexts, the Commission should engage the ever more powerful

entities in the industry to responsibly and reasonably negotiate fair automatic roaming agreements with carriers who serve rural areas of the United States. In so doing the Commission will promote competition in rural areas and will preserve the mobility of wireless services, in keeping with the expectations of American consumers.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

[filed electronically]

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