

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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

To: The Commission

OPPOSITION TO PETITIONS TO DENY
BY VIA/NET COMPANIES

Via/Net Companies, Inc. ("Via/Net")¹ hereby submits its reply comments to the petitions to deny the transfer of Nextel's licenses, authorizations and leased spectrum rights to operate on EBS and BRS spectrum in the 2.5 GHz band to Sprint and submits that the transfer is in the public interest and should be approved.

BACKGROUND

Via/Net is the successor corporation to Tekkom, Inc., which was granted one of the first MDS licenses in 1975. MDS was originally designed to be a business service but soon became used to deliver subscription television. As cable television companies entered the subscription television market it soon became apparent that single channel subscription television providers could not compete. STV services soon went out of business.

In 1981 Channel View, Inc., which was part owned by the principals of Via/Net, pioneered the development of equipment to deliver subscription television service over

¹ Via/Net is a MDS and MMDS licensee. Some of its channels are leased to Sprint.

multiple channels in the 2GHz band. The Commission responded by allocating MMDS spectrum and permitting the use of ITFS channels for part time delivery of subscription television service. As competition took hold the number of subscription television channels delivered by cable and by satellite increased dramatically eventually squeezing out all other providers.

At the same time, the demand for voice and data services was exploding and it was evident that the 2GHz band could be used to effectively compete in this market. At the invitation of the Chief of the Wireless Bureau, WCA, the industry association, proposed a reconfiguration of the band to provide for additional competition in the market. This proposal lead to the adoption of the EBS and BRS rules.

Sprint and MCI were the pioneers who had the vision to pursue the development and re-allocation of the spectrum and they expended many millions of dollars in that effort. When MCI fell into bankruptcy, Nextel acquired its 2GHz spectrum. As the CTCNet filing shows, each pursued a strategy of aggregating as much of the spectrum as possible in individual markets. Nevertheless, neither Sprint nor Nextel can separately provide a nationwide network that is critical to the success of the service. The proposed merger will close that gap.

THE PETITIONS TO DENY ARE BASED A MISUNDERSTANDING OF THE MARKET

There was only applause when Sprint and MCI began to acquire underutilized 2 GHz spectrum and tackle the difficult task of dealing with many different licensees who had different needs and expectations. Indeed, but for their efforts, numerous benefits to the educational community would not have been realized. No one objected when Sprint

and MCI acquired all, or nearly all, of the spectrum in a single market. It is only now, when others covet this spectrum, that complaint is being heard.

1. Consumers will be benefited by the merger

The false premise that underlies the assertion that consumers will be harmed by the merger is that competition will be limited “by allowing one entity to control an excessive amount of mobile broadband spectrum.”² This misconception is based on a misunderstanding of the market. It is the data/voice/video delivery market. Mobile broadband service is a subset of this market.

National Rural Telecommunications Cooperative (NRTC) sees the same spectrum as providing fixed wireless service to extend DSL service to rural areas, another market subset. According to NRTC “WiMAX may be the only technology besides satellite to be technically and economically feasible for many rural communities”³ and “licensed spectrum will be essential” to provide this service in rural areas.⁴ NRTC cites a WiMAX Forum paper in support of this proposition⁵ however; this paper concludes that unlicensed spectrum “is often a good choice in rural areas.”⁶

A similar position was taken in a petition to deny filed by the Community Technology Centers’ Network (CTCNet) “on behalf of itself and its members.”⁷ According to CTCNet, many of its community centers are located in areas “not passed by

² CFA & CU petition to deny, page 1.

³ NRTC Comments, page 3.

⁴ *Id.*

⁵ NRTC Comments, page 2, fn. 8.

⁶ *Business Case Models for Fixed Broadband Wireless Access based on WiMax Technology and the 802.16 Standard*, October 10, 2004, WiMAX Forum. This paper identifies three frequency bands for WiMax, two licensed bands, 2.5 GHz and 3.5 GHz, and the unlicensed band at 5.8 GHz.

⁷ CTCNet petition, page 1.

traditional wired broadband services.”⁸ In support of this proposition CTCNet filed declarations from “two CTCNet members” stating that they would “be directly and adversely affected” by the merger.⁹ One of these declarations is on behalf of the YMCA of San Diego County. Since Via/Net is located in San Diego County, we asked the YMCA if this declaration reflected their position and were told that it does not. Attached hereto, and incorporated by this reference, is a letter dated April 11, 2005, from the San Diego YMCA stating that this declaration was unauthorized and does not represent the position of the YMCA.

II. The market is highly competitive and fast growing

Cellular companies are delivering mobile voice/data and now video using digital video broadcasting hand helds. Nokia is conducting a field trial in Pittsburgh with Crown Castle, a company that engineers, deploys and operates advanced shared wireless infrastructure. Video54 Technologies introduced the BreamFlex platform at the 2005 Consumer Electronics Show as a way to provide a constant 15 Mbps – 20 Mbps of available bandwidth over WiFi frequencies. On March 16, 2005, the Commission allocated additional spectrum in the 3650-3700 MHz band to enable licensees to offer nationwide WiFi service. In January of 2004 the Commission auctioned off more than \$118 million worth of spectrum in 500 MHz blocks in the 12.2 – 12.7 GHz spectrum which can be used for “any digital fixed non-broadcast service.”

As the WiMAX Forum paper shows, voice/data/video service market is also expected to use a combination of wireless and wired services. Cable television has been

⁸ *Id.*, page 4.

⁹ *Id.*, page 5, fn. 5.

doing fiber-to-the-node (FTTN) for two decades as part of its very successful hybrid fiber/coax (HFC) architecture. HFC enabled cable to substantially increase its number of channels and when digital compression was added to provide high speed data service. SBC announced in June 2004 that it would deploy FTTN for new construction and fiber to the curb in the next three to five years. Verizon is expected to build FTTN to 3 million properties by the end of this year. Both SBC and BellSouth are working with next-generation technologies that promise up to 40 Mbs of downstream data over twisted wire. Broadband power lines are also being used to deliver high-speed voice, data and video.

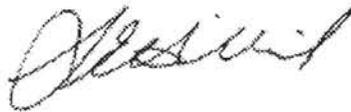
This is a highly competitive market and competition will be enhanced, not diminished, by the merger of Sprint and Nextel's 2.5 GHz holdings. The combined Sprint-Nextel will be an independent wireless company, one without Bell Company ties, and one with every incentive to drive internodal competition even further.

CONCLUSION

The public interest will not be advanced by splintering the 2 GHz frequency blocks that Sprint and MCI so painfully assembled, into small chunks that are not viable in order to provide a windfall to operators who lack the resources to develop and deploy the necessary technology. Interestingly, none of Sprint's wireless competitors are objecting to the proposed merger, as they surely would if they were going to be placed at a competitive disadvantage. Only one licensee has complained, not about the merger, but to improve its position in order to enjoy the benefits of a nationwide network resulting from the merger.

We urge the Commission not to repeat the mistakes of the past that have resulted in weak competitors who lack sufficient bandwidth to compete in the market place in the name of "competition." The technological challenges to efficient use of the EBS/BRS band should not be underestimated. Large amount of bandwidth is simply required to meet the demands of today's fast breaking technology. The merger of Sprint and Nextel will result in a company with the resources and incentives to make the necessary R&D investments. Via/Net and the public alike will greatly benefit from Sprint's research development and deployment of broadband services in the EBS/BRS bands. The merger is clearly in the public interest and should be approved.

Respectfully submitted,
Via/Net Companies, Inc.



Sharon E. Hilliard, President
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April 11, 2005

ATTACHMENT



April 11, 2005

VIA/NET Companies
Sharon E. Hilliard
P.O. Box 2090
Del Mar, CA 92014

Dear Ms. Hilliard:

This letter is in reference to the signed CTCNet declaration by Cesar Marcano regarding the proposed merger of Nextel and Sprint.

The signed declaration does not represent the views or opinions of the YMCA of San Diego County nor does Mr. Marcano have any authority to make statements or declarations on behalf of the YMCA of San Diego County. Further more, Mr. Marcano made these statements without seeking guidance or approval from appropriate YMCA authorities.

The YMCA of San Diego County recognizes that the technology world is continuously changing for the good of the consumer, to that end; the YMCA of San Diego County has no opinion regarding this or any other proposed telecommunications merger.

The signed declaration should be viewed solely as the opinions of Mr. Marcano.

Sincerely,

John Merritt
IT Director
YMCA of San Diego County