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

In the Matter of	)	
	)	
Nextel Communications Inc. and	)	
Sprint Corporation Seek FCC Consent	)	WT Docket No. 05-63
to Transfer Control of Licenses and	)	
Authorizations	)	

REPLY
of
CONSUMER FEDERATION OF AMERICA
and
CONSUMERS UNION

The Consumer Federation of America and Consumers Union, pursuant to the procedures established by the Federal Communications Commission ("FCC" or "Commission") in its Public Notice of February 28, 2005,[1/] respectfully submit this Reply to the Joint Opposition (the "Opposition") of Nextel Communications, Inc. ("Nextel") and Sprint Corporation ("Sprint," and together with Nextel, "Sprint Nextel") responsive to the Petition to Deny that we submitted on March 30, 2005 (the "Petition").[2/] Our Petition opposed the applications submitted by

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1/ Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63; Public Notice DA 05-502, February 28, 2005.

2/ Sprint Nextel complains that our Petition was procedurally defective because we did not demonstrate that we have standing to submit the

Petition. Our Petition (at notes 4 and 5) demonstrates our interest in this and similar proceedings; a declaration attached to this Reply cures any perceived procedural deficiencies. Moreover, we note that the FCC, even while questioning our standing to participate in the proceeding considering the AT&T Wireless/Cingular merger, permitted our participation in that proceeding nonetheless. *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations and Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent to Assignment and Long-Term De Facto Lease of Licenses and Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 19 FCC Rcd. 21522 (2004) ("*Cingular-AT&T Wireless Merger Order*") at n. 196. The FCC should reach the same conclusion here. We also note that even if our Petition cannot be considered a Petition to Deny because of our alleged lack of standing, the FCC can and should still consider our pleading an informal opposition. Finally, Sprint Nextel complains that it was not served with a copy of our Petition. The FCC's February 28, 2005 Public Notice, which specified filing requirements, did not require service to Sprint Nextel. To the extent that the FCC believes that its Public Notice did not supercede the provisions of Section 1.939(c) of the rules, the FCC is asked to waive that

Sprint and Nextel seeking FCC approval of the transfer of control to Sprint of the licenses held directly and indirectly by Nextel.

DISCUSSION

Our Petition points out that the Sprint Nextel merger will result in the combined entity holding significantly more than the 80 MHz of spectrum per market that the FCC found acceptable (and that we continue to find unacceptable) in the *Cingular-AT&T Wireless Merger Order*. The Joint Opposition does not demonstrate why the FCC should depart from that standard in this case. Adherence to that test dictates that the combined entity be required to divest itself of its holdings in the 2496-2690 MHz band (the "2.5 GHz Band").[3/]

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regulation with respect to our Petition. Based on the nearly immediate posting of our Petition on the FCC's Electronic Comment Filing System ("ECFS") and the content of the Joint Opposition, Sprint Nextel was plainly not prejudiced by our failure to serve it.

[3/] Unlike other petitions to deny that address the 2.5 GHz band that Sprint Nextel alleges are not merger specific, our Petition is merger specific. We realize that Sprint and Nextel typically hold 2.5 GHz spectrum in different markets today and that the merger will generally not result in an increase in the combined 2.5 GHz spectrum holdings in a market. However, because of the other broadband wireless spectrum that the two entities hold, the merger will result in

Sprint Nextel would like to have it both ways. On the one hand, it argues that the 2.5 GHz band is simply "an input, not a service or market itself."[4/] Consistent with that assertion, it points out that additional spectrum will soon be made available for broadband mobile wireless services.[5/] On the other hand, Sprint Nextel asserts that the 2.5 GHz band cannot be used to provide voice telephony, but will be dedicated for wireless interactive media services, which it suggests is a separate product market.[6/] It asserts, therefore, that the 2.5 GHz band is necessary for it to provide wireless interactive media services[7/] and that the FCC should not now assess its market power over the wireless interactive media services market.[8/]

The truth, as Sprint Nextel itself recognizes[9/], is that the 2.5 GHz Band is simply an input -- broadband wireless mobility spectrum -- and Sprint Nextel will have more of it than the FCC has permitted in the past. Sprint Nextel recognizes

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the accumulation of too much broadband wireless spectrum in the hands of one entity.

4/ Joint Opposition at 20.

5/ Joint Opposition at 23-24.

6/ Joint Opposition at 30.

7/ Joint Opposition at 25-29.

8/ Joint Opposition at 20-22.

9/ Petition at notes 20-22, 24, 25.

the fungibility of the 2.5 GHz spectrum by asserting that there is an opportunity for competitors to secure access to additional spectrum in the future.[10/] Although it states that the spectrum the FCC will make available in the future can be used to offer wireless interactive media services in particular, it is expected that this same spectrum can be used to support a variety of broadband mobile wireless services, including voice telephony.

It is accurate that the 2.5 GHz band is not, because of technical and regulatory challenges of the past, being used for broadband mobile wireless today. However, there can be no serious doubt that technological convergence will promote the use of the same or similar services on all broadband wireless mobile frequencies, regardless of whether the spectrum was initially licensed as multipoint distribution service ("MDS"), cellular, personal communications services ("PCS"), specialized mobile radio ("SMR") or other services. Simply because the regulations and technology relevant to the 2.5 GHz band are in a "state of flux" should not entitle Sprint Nextel to accumulate more spectrum today for what will certainly be the provision of broadband mobile wireless services tomorrow.

[10/] Joint Opposition at 23-24. Sprint Nextel says that the 2.5 GHz band is not a "unique resource." It is correct. The band is simply one of several bands available for use by broadband mobile wireless services and the FCC has stated that entities should be limited to 80 MHz of such spectrum in a market.

Even if the FCC determines that the wireless interactive media services (of which the 2.5 GHz band is, according to Sprint Nextel, a part) represents a separate -- and nascent -- market, the FCC should, contrary to Sprint Nextel's assertion, evaluate the merger's effect on this market. Sprint Nextel's arguments notwithstanding, the Commission found it appropriate to do so in evaluating the AOL/Time Warner merger with respect to the nascent instant messaging market.[11/] In fact, in that decision, the Commission specifically distinguished the AT&T-Media One Merger Order cited by Sprint Nextel in support of its position that the FCC should not evaluate the effects of mergers on nascent markets.[12/]

Although the FCC has not considered the 2.5 GHz band part of the broadband mobile wireless market before, it should now. In the past it may have been unclear whether this spectrum would be used for broadband mobile wireless services. It is now evident that the band will be used for precisely that purpose.

[11/] In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd. 6547 (2001).

[12/] Id. at ¶ 185. The fact that the FCC later revisited the merger condition imposed in the AOL/Time Warner decision does not affect the validity of the FCC's determination to review nascent technologies at the time it considered the merger.

The FCC should, therefore, revisit its conclusion not to include the 2.5 GHz band in its consideration of the accumulation of broadband mobile wireless spectrum and, based on Sprint Nextel's aggregation of the broadband mobile wireless spectrum, require that it divest itself of the 2.5 GHz band.

CONCLUSION

We hereby submit the foregoing reply and ask that the FCC deny the applications submitted by Sprint and Nextel and take any other actions supported by the views expressed herein.

Respectfully submitted,

Mark Cooper Director of Research Consumer Federation of America Consumers Union 1424 16th Street, N.W. Washington, D.C. 20036 301-384-2204	Gene Kimmelman Senior Director of Public Policy Consumers Union 1666 Connecticut Avenue, N.W. Suite 310 Washington, D.C. 20009 202-462-6262
	
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April 18, 2005

Declaration of Mark Cooper

I, Mark Cooper, on behalf of myself and the Consumer Federation of America and Consumers Union, hereby declare upon my own personal knowledge that the Consumer Federation of America and Consumers Union are, as stated in their Petition To Deny in this proceeding, interested in the outcome of Petitioners' Application both as consumers of telecommunications services and as representatives of telecommunications customers in all fifty states.

I further verify and affirm upon my own personal knowledge that the grant of Petitioners' Application, absent condition, would harm the public interest for the specific reasons set forth in the Petition To Deny of Consumer Federation of America and Consumers Union and in this Reply.

By: _____

Date: 4/18/05

CERTIFICATE OF SERVICE

I,  , hereby certify that on this 18th day of April, 2005, copies of the foregoing Reply of were delivered by first class, postage-prepaid mail to the following parties.

Robert S. Foosaner
Lawrence R. Krevor
Jared M. Carlson
Trey Hanbury
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Vonya B. McCann
H. Richard Juhnke
Luisa L. Lancetti
Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, DC 20004

Regina M. Keeney
A. Richard Metzger, Jr.
Stephen J. Berman
A. Renée Callahan
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, N.W., Suite 802
Washington, DC 20006
202-777-7700
Counsel for Nextel Communications, Inc.

Philip L. Verveer
Michael G. Jones
David M. Don
Megan Anne Stull
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006
202-303-1000
Counsel for Sprint Corporation

Best Copying and Printing, Inc.
Federal Communications Commission
Room CY-B402
445 12th Street, S.W.
Washington, DC 20554

Louis Peraertz
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Sara Mechanic
Spectrum and Competition Policy Division
Wireless Communications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Erin McGrath
Mobility Division
Wireless Communications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 2055

Dennis Johnson
Broadband Division
Infrastructure Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jeff Tobias
Public Safety and Critical
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

David Krech
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Pamela Megna
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jim Bird
Office of the General Counsel
Analysis
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jonathan Levy
Office of Strategic Planning and Policy
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Wayne McKee
Engineering Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Charles Iseman
Experimental Licensing Branch
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

JoAnn Lucanik
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Debbie Goldman
George Kohl
501 Third Street, N.W.
Washington, DC 20001
Counsel for Communications Workers of America

Christine M. Gill
David D. Rines
McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005-3096

Jack Richards
Kevin G. Rupy
Keller and Heckman LLP
1001 G Street, N.W.
Washington, DC 20001

Counsel for SouthernLINC Wireless

Counsel for National Rural Telecommunications Cooperative

Paul C. Besozzi
Nicholas W. Allard
Stephen Diaz Gavin
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037
Counsel for Preferred Communications Systems, Inc.

David L. Nace
Pamela L. Gist
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102
Counsel for Rural Cellular Association

George Y. Wheeler
Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006
Counsel for United States Cellular Corporation

Bruce D. Jacobs
Tony Lin
Jarrett Taubman
Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Counsel for NY3G Partnership

John J. Zoltner
Ryan Turner
Community Technology Centers' Network Corporation
1436 U Street, N.W., Suite 104
Washington, DC 20009
Counsel for Community Technology Centers' Network

Julian L. Shepard
Mark Blacknell
Williams Mullen, A Professional Corporation
1666 K Street, N.W., Suite 1200
Washington, DC 20006-1200
Counsel for Safety and Frequency Equity Competition Coalition

Seema M. Singh, Esq.
Ratepayer Advocate
Christopher J. White, Esq.
Deputy Ratepayer Advocate
State of New Jersey
Division of The Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

James T. Martin
Executive Director
United South and Eastern Tribes, Inc.
711 Stewarts Ferry Pike
Suite 100
Nashville, TN 37214
Counsel for United States and Eastern Tribes, Inc.

Counsel for the New Jersey Division of the Ratepayer Advocate

Chuck Canterbury
National President
Grand Lodge Fraternal Order of Police
309 Massachusetts Avenue, N.E.
Washington, DC 20002
Counsel for Grand Lodge Fraternal Order of Police

Richard Ruhl
General Manager
Pioneer Telephone Cooperative, Inc.
P.O. Box 539
108 East Robberts Avenue
Kingfisher, OK 73750
Counsel for Pioneer Telephone Cooperative, Inc.

Marc H. Morial
President and CEO
National Urban League
120 Wall Street
New York, NY 10005
Counsel for National Urban League

Harry C. Alford
President and CEO
National Black Chamber of Commerce
1350 Connecticut Avenue, N.W.
Suite 405
Washington, DC 20036
Counsel for National Black Chamber of Commerce

Larry E. Sevier
President
Nex-Tech Wireless, LLC
2418 Vine Street
Hays, KS 67601
Counsel for Nex-Tech Wireless, LLC

Michael K. Kurtis
Bennet & Bennet, PLLC
10 G Street, N.E., 7th Floor
Washington, DC 20002
Counsel for Richard W. Duncan d/b/a Anderson Communications

Sheri A. Farinha, CEO
NorCal Center on Deafness
4708 Roseville Road
Suite 111
North Highlands, CA 95660
Counsel for NorCal Center on Deafness

Craig Mock
General Manager
United Telephone and Associations, Inc.
P.O. Box 117
Dodge City, KS 67801
Counsel for United Telephone and Associations, Inc.

Signed: