

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Applications of)
)
NEXTEL COMMUNICATIONS, INC.,)
Transferor,)
)
and)
)
SPRINT CORPORATION,) WT Docket No. 05-63
Transferee,)
) Application File Nos. 0002031766
) through 0002031797
)
For Consent to the Transfer of Control of)
Entities Holding Commission Licenses and)
Authorizations Pursuant to Section 310(d))
of the Communications Act)

To: The Commission

**SAFE COMPETITION COALITION
REPLY TO JOINT OPPOSITION TO
PETITIONS TO DENY**

SAFETY AND FREQUENCY EQUITY
COMPETITION COALITION (SAFE)

Julian L. Shepard
Mark Blacknell
Williams Mullen, A Professional Corporation
1666 K Street, N.W., Suite 1200
Washington, DC 20006-1200
(202) 833-9200
Its Attorneys

April 18, 2005

Table of Contents

SUMMARY iii

I. THE ISSUES IN THE SAFE PETITION TO DENY ARE DIRECTLY MERGER-RELATED 3

II. THE COMMISSION RECOGNIZES A DISTINCT COMMERCIAL DISPATCH MARKET 4

III. THE COMMISSION HAS NEVER CONCLUDED THAT THE DISPATCH MARKET WAS SUBSUMED WITHIN A BROADER MOBILE TELEPHONY MARKET 6

IV. THE AUTHORITIES CITED IN THE JOINT OPPOSITION SUPPORT THE CONCERNS ADVANCED IN SAFE’S PETITION TO DENY 8

V. THE ANALYSIS OF THE PROPOSED MERGER’S IMPACT ON COMPETITION IN THE DISPATCH MARKET SHOULD MIRROR THE ANALYSIS REGULARLY UTILIZED BY THE COMMISSION. 10

VI. CONCLUSION 13

SUMMARY

Unless the Commission imposes the necessary safeguards, the Sprint/Nextel merger will directly threaten competition itself in certain dispatch markets. The Petition to Deny filed by the SAFE Competition Coalition ("SAFE") laid out, in detail, the threat that Sprint/Nextel's combined market power and spectrum holdings will have on certain regional markets. Sprint and Nextel ("Applicants") failed to provide a substantive response. Instead, Applicants attempted to deflect the Commission's attention away from competitive concerns by pointing to SAFE's participation in the 800 MHz rebanding proceeding, and falsely claiming that Commission does not even recognize the existence of a commercial dispatch market.

At the outset, the Commission should dismiss as disingenuous the Applicants' claim that there is no dispatch market, and thus no need to provide the Commission with information on the impact of the merger on that market. In fact, the Commission has long recognized a distinct commercial dispatch market in its annual reports on competition in the Commercial Mobile Radio Service ("CMRS") industry. Further, the Commission has directly commented on the consolidation of competition in the dispatch market, noting the loss of all significant dispatch competitors to Nextel, save SouthernLINC, by 2001.

Today's dispatch market - where Nextel's only remaining serious competitors are small regional operators such as SAFE members - provides a substantially different background than that encountered by the Commission in considering previous Nextel acquisitions. Those combinations took place in a market where competitors - dispatch providers with access to the spectrum they needed to develop services competitive with Nextel - would remain after the acquisition. Now, the Sprint/Nextel merger is proposed in the context of a highly concentrated dispatch market with significant barriers to entry. The proposed merger will further raise those

barriers to entry – to the extent that Nextel will be able rid itself of competition in certain dispatch markets.

The Commission has noted that where a concentrated market is combined with high barriers to entry, that market is susceptible to anti-competitive behavior. The Sprint/Nextel merger will unquestionably raise a significant barrier to entry in some dispatch markets by limiting competitors' access to spectrum. This merger is proposed at a time when the only significant competitors left in certain markets - SAFE members - have already been hobbled by a lack of access to Enhanced Specialized Mobile Radio ("ESMR") spectrum. This spectrum is required for conversion of their systems to a high-density digital cellular architecture, which would permit them to offer integrated dispatch/mobile telephony services competitive with Sprint/Nextel's offerings. However, ESMR spectrum is not available through auction, and a combined Sprint/Nextel entity will hold almost all of the available ESMR spectrum. Post-merger, Sprint/Nextel will have absolutely no incentive to provide its sole viable competitors in these dispatch markets with access to ESMR spectrum through secondary markets. With the advantage of spectrum barriers to entry limiting competition in these regional dispatch markets, a merged Sprint/Nextel would quickly rid itself of all competitors in these markets, thus ending all dispatch competition in those markets.

In light of the above, the application should be designated for hearing and the Applicants should be required to provide sufficient evidence that the alleged benefits of the proposed merger outweigh the costs of achieving them. The Commission's public interest authority should be exercised on the basis of a full and complete record, addressing all of the relevant competition issues. The Commission should then exercise its authority to impose and enforce appropriately tailored, transaction-specific conditions to ensure that the public interest is served by the transaction.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Applications of)
)
NEXTEL COMMUNICATIONS, INC.,)
Transferor,)
)
and)
)
SPRINT CORPORATION,) WT Docket No. 05-63
Transferee,)
) Application File Nos. 0002031766
) through 0002031797
)
For Consent to the Transfer of Control of)
Entities Holding Commission Licenses and)
Authorizations Pursuant to Section 310(d))
of the Communications Act)

To: The Commission

SAFE COMPETITION COALITION
REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY

The Safety and Frequency Equity Competition Coalition (“SAFE”), a Petitioner in the above-referenced proceeding, by its attorneys and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, and Section 1.939 of the Commission’s Rules, 47 C.F.R. § 1.939, hereby submits this Reply to the “Joint Opposition to Petitions to Deny and Reply to Comments” filed jointly by Sprint Corporation (“Sprint”) and Nextel Communications, Inc. (“Nextel”) on April 11, 2005 (“Joint Opposition”).¹

The Joint Opposition attempts to dismiss all of the issues raised in the SAFE Petition to Deny (“SAFE Petition”) with a scant paragraph, which is part of a general argument

¹ Throughout this Reply, Sprint and Nextel are referred to each as an “Applicant” and collectively as the “Applicants.”

directed at all the Petitions to Deny asserting that the issues raised are not merger-related.² The Joint Opposition provides two specific arguments, both unsupported, regarding the issues in the SAFE Petition: (1) there is no separate dispatch market;³ and (2) the merger will have no impact on the provision of services in that market.⁴ These arguments fail, as does the Applicants' claim that SAFE is raising issues that belong in another proceeding. Simply stated, where a party such as SAFE has raised an issue in another proceeding, it does not logically follow that the issue automatically is unrelated to the proposed merger transaction, especially when the issue is directly a matter of existing anti-competitive conditions that would be made worse by the proposed merger.⁵ Indeed, the issues raised by SAFE are directly merger related and pertinent to the Commission's consideration of whether the proposed merger is in the public interest.

SAFE agrees that "[t]he Commission's priority is to protect competition, not competitors, for the benefit of consumers."⁶ However, without any real competitors, there is no real competition, and thus no real benefit to consumers. As discussed herein, and in the SAFE Petition, the merger of Sprint and Nextel represents a direct threat to the existence of the only real competitors Nextel has in the dispatch markets in which SAFE members operate.

² See *Joint Opposition* at 15.

³ *Joint Opposition* at 15.

⁴ *Id.*

⁵ See *Petition for Partial Reconsideration of the 800 MHz Supplemental Order*, and *Petition for Partial Reconsideration of Coastal/ARC and Scott MacIntyre*, attached to the *SAFE Petition to Deny*.

⁶ See *In re Applications of Nextel Communications, Inc., for Transfer of Control of OneComm Corp., N.A., and C-Call Corp.*, Order, 10 FCC Rcd 3361, para. 27 ("*OneComm*").

I. THE ISSUES IN THE SAFE PETITION TO DENY ARE DIRECTLY MERGER- RELATED

The Sprint/Nextel merger cannot be in the public interest if it is permitted to exacerbate existing anticompetitive conditions in certain regional dispatch markets. Negative externalities in the form of competitive barriers to entry were created when the Commission adopted the *800 MHz Report and Order*, which restricted the ability of Nextel's smaller, regional competitors from utilizing all of their spectrum resources to offer integrated dispatch mobile telephony service with high density cellular facilities in certain regional markets, today and in the future. Consequently, competition would further suffer if the proposed merger is approved by the Commission without appropriate conditions preventing further harm in these adversely-affected regional dispatch markets.

Despite Sprint/Nextel's assertion to the contrary, the Commission has long recognized the dispatch market in which Nextel enjoys market power by virtue of its extensive acquisitions and mergers to date. The Commission has reasoned that such market power is not necessarily harmful, if the appropriate conditions exist to permit competition and competitive entry. However, those conditions will not exist unless the Commission imposes them. Neither the Application nor the Joint Opposition has demonstrated that the proposed merger will not further harm competition in these regional dispatch markets; instead they have argued that the issue of competition and competitive barriers to entry – access to spectrum – are not merger-related. The Applicants completely ignore the fact that the proposed merger would permit the combining of Nextel's and Sprint's customers and spectrum resources, thereby increasing market power of the already dominant service provider in dispatch markets. Further, this is taking place in the face of severe spectrum constraints faced by Nextel's current competitors in certain

regional dispatch markets from upgrading their systems to offer the same competitive service combination offered by Nextel – integrated mobile telephony and dispatch service.

II. THE COMMISSION RECOGNIZES A DISTINCT COMMERCIAL DISPATCH MARKET

Sprint’s and Nextel’s assertion that “wireless voice services” are now a “single, integrated mobile telephony market” is demonstrably false. It conveniently ignores the Commission’s long history of recognizing the existence of a separate market for dispatch services. Since 1995, the Commission has prepared annual reports that analyze competitive conditions in the Commercial Mobile Radio Service (“CMRS”) industry.⁷ Thus far, the Commission has issued nine successive annual reports⁸ on the state of CMRS competition.⁹ Each of these annual reports has recognized the existence of a dispatch market. A closer examination of these reports illustrates the reasons why competitive harm would result from the proposed merger in certain regional dispatch markets.

The *Fifth Report*, issued in 2000, devotes an entire section to the “commercial dispatch market.”¹⁰ This report is generally representative of the previous years’ reports, in that

⁷ 47 U.S.C. § 332(c)(1)(C).

⁸ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *First Report*, 10 FCC Rcd 8844 (1995) (“*First Report*”); *Second Report*, 12 FCC Rcd 11266 (1997) (“*Second Report*”); *Third Report*, 13 FCC Rcd 19746 (1998) (“*Third Report*”); *Fourth Report*, 14 FCC Rcd 10145 (1999) (“*Fourth Report*”); *Fifth Report*, 15 FCC Rcd 17660 (2000) (“*Fifth Report*”); *Sixth Report*, 16 FCC Rcd 13350 (2001) (“*Sixth Report*”); *Seventh Report*, 17 FCC Rcd 12985 (2002) (“*Seventh Report*”); *Eighth Report*, 18 FCC Rcd 14783, (2003) (“*Eighth Report*”); *Ninth Report*, 33 CR 1252 (2004) (“*Ninth Report*”).

⁹ This report, like the others before it, discusses CMRS as a whole because Congress called on the Commission to report on “competitive market conditions with respect to commercial mobile services.” 47 U.S.C. § 332(c)(1)(C). Any individual proceeding in which the Commission defines relevant product and geographic markets, such as an application for approval of a license transfer, may present facts pointing to narrower or broader markets than any used, suggested, or implied in this report.

it directly identifies, and examines competition in, the commercial dispatch market.¹¹ In the *Fifth Report*, the Commission noted that the dispatch market was dominated by four entities of significant size – Nextel, SouthernLINC, Mobex, and Chadmoore.¹² The remaining competitors – SAFE members among them – were described as “small dispatch operators covering localized areas, with less than \$5 million in annual revenues.”¹³ However, the Commission noted that “growth [also] shows the continued demand for cheaper, dispatch-only service that is generally provided by analog operators,” citing the *Fourth Report* in conjunction with figures showing growth in the analog dispatch market.¹⁴ The *Fifth Report* referenced a quote from the COO of Chadmoore Wireless Group, Inc., who indicated that it intended to continue to offer cost-effective analog dispatch services to their customers.¹⁵ Nextel bought Chadmoore the very next year, putting an end to yet another dispatch competitor.¹⁶

The Commission also noted in the *Fifth Report* that the dispatch market, traditionally served by analog SMR operators, was facing competitive pressure from “[n]on-SMR operators [who] are now offering calling plans or services that attempt to provide or compete with what is considered the distinctive aspect of dispatch service: its group, or one-to-many, feature.”¹⁷ Thus, the Commission has long recognized that non-Nextel firms that offer

¹⁰ *Fifth Report* at 70.

¹¹ See, e.g., *First Report* at 35; *Second Report* at 36; *Third Report* at 52; *Fourth Report* at 47.

¹² *Fifth Report* at 70.

¹³ *Fifth Report* at 71.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *In re Applications of Chadmoore Wireless Group, Inc. and Various Subsidiaries of NEXTEL Communications, Inc. for Consent to Assignment of Licenses*, 16 FCC Rcd 21105 (2001).

such services – such as Sprint – compete with analog SMR operators – such as SAFE members – for some customers in the dispatch market.

In sum, the dispatch market described in 2000 included four competitors of significant size with substantial localized competition from smaller operators, many of whom faced some form of competition from non-Nextel firms offering some dispatch-like functions, such as Sprint. Nevertheless, the existence of this type of feature-related competition did not persuade the Commission that dispatch was indistinguishable from mobile telephony. Of further importance is the fact that, at that time, the regional and smaller competitors did not face restrictions on their ability to utilize their spectrum resources in exactly the same manner as Nextel, their dominant competitor, used its spectrum resources – to offer integrated mobile telephony and dispatch service using high-density cellular architecture.

III. THE COMMISSION HAS NEVER CONCLUDED THAT THE DISPATCH MARKET WAS SUBSUMED WITHIN A BROADER MOBILE TELEPHONY MARKET

Nextel's expansion through mergers and acquisitions of competitors not only led to its dominance of the dispatch market, it was a factor in the Commission's decision to reduce its reporting of competition in the market for lack of information. While the *Sixth Report* acknowledges "increasing convergence,"¹⁸ the real reason for discontinuing a reporting on competition in the dispatch market was the clear emergence of Nextel as the dominant service provider, and the resulting scarcity of data. The Commission did not say that the commercial

¹⁷ *Fifth Report* at 71.

¹⁸ The *Sixth Report*, issued in 2001, notes: "[the] structure of this report differs from the structure of the *Fifth Report* because it focuses on two categories of wireless services: mobile telephony and mobile data. This is a departure from previous reports where there was also a separate section for dispatch services. While traditional dispatch service continues to be provided, there has been an increasing convergence of services provided by dispatch and other mobile telephony providers." *Sixth Report* at 13352-53 (citations omitted).

dispatch market had either ceased to exist, or had been subsumed in a broader service market such as mobile telephony. Rather, Nextel's acquisition of all significant operators, save SouthernLINC, had led to so little information about competition in the market that the Commission could not produce a detailed analysis of competition in that specific market segment.¹⁹

The Commission's coverage of the dispatch market in its annual reports on CMRS competition did not cease entirely – it was merely reduced. The most recent *Ninth Report* continues the pattern of dispatch analysis that was established in the *Sixth Report*. In the *Ninth Report*, the Commission notes that “[w]hile Commission policy permits flexible use of this spectrum, including the provision of paging, dispatch, mobile voice, mobile data, facsimile, or combinations of these services, the primary use for SMR traditionally has been trunked dispatch services.”²⁰ The Commission goes on to acknowledge that “[d]ispatch differs from mobile voice communications offered by PCS and cellular carriers in that it allows both one-to-one and one-to-many communication (including real-time conferencing with groups), and it generally does not operate through interconnection with the public switched telephone network.”²¹ Thus, the

¹⁹ Moreover, public information regarding dispatch services, as distinct from mobile telephony services, has become more limited. In the Fifth Report, public information was available regarding four providers of dispatch services. Two of these providers, [Nextel and Southern LINC], offer dual, mobile telephony-dispatch services that straddle the mobile telephony and dispatch sectors. Of the other two major providers of dispatch services discussed in the Fifth Report, Chadmoore Wireless Group, Inc. (“Chadmoore”) and Mobex Communications, Inc. (“Mobex”), Nextel has announced plans to acquire Chadmoore and buy Mobex's SMR licenses. Therefore, for purposes of this report, it is more appropriate to analyze these services as part of the mobile telephony sector.” *Id.* (citations omitted).

²⁰ *Ninth Report* at 89 (noting that “Dispatch services allow two-way, real-time, voice communications between fixed units and mobile units (e.g., between a taxicab dispatch office and a taxi) or between two or more mobile units (e.g., between a car and a truck). See *Fifth Report*, at 17727-17728, for a detailed discussion.”

²¹ *Ninth Report* at 89, citing The Strategis Group, THE STATE OF THE SMR INDUSTRY: NEXTEL AND DISPATCH COMMUNICATIONS (Sept. 2000), at 57; The Strategis Group, U.S. DISPATCH MARKETS (Jan. 2000), at 1.

Commission has continuously recognized the existence of a dispatch market in each of its reports on competition in the Commercial Mobile Radio Service in the past decade.

This review of the Commission's analysis of CMRS competition to date reveals that the dispatch market has never been found to be subsumed by the mobile telephony market. Not only is there a distinct commercial dispatch market, but the competitive picture has drastically changed in recent years. Nextel has not only acquired Chadmoore, but Mobex too, leaving one remaining regional competitor of significant size, SouthernLINC (which by virtue of a waiver and special treatment in the 800 MHz proceeding does not face the same spectrum-related competitive barrier to entry). Elsewhere, there are now only small regional firms, such as SAFE members, struggling to survive as Nextel's only real competitors in the dispatch market.²²

IV. THE AUTHORITIES CITED IN THE JOINT OPPOSITION SUPPORT THE CONCERNS ADVANCED IN SAFE'S PETITION TO DENY

The Joint Opposition cites *Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order,²³ in support of the notion that there is no longer a dispatch market. The *Third Report and Order* does no such thing. In fact, a plain reading of the first paragraph cited by the Applicants shows that the Commission's definition of the CMRS market was a theoretical one, adopted for the purpose of removing barriers affecting competition. The Commission wanted to "adopt an expansive view of the extent of actual *or potential* competition in the commercial mobile radio services marketplace *for purposes of examining the*

²² See, e.g., Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, paras. 164-169 (2004) as amended by Erratum, DA 04-3208, 19 FCC Rcd 19651 (2004) and Erratum, DA 04-3459, rel. Oct. 29, 2004. ("*800 MHz Report and Order*") (providing SouthernLINC with exclusive access to specially expanded ESMR spectrum band, pursuant to an agreement with Nextel).

²³ 9 FCC Rcd, paras. 37-43 (1994) ("*Third Report and Order*").

technical and operational rules governing these services.” (Emphasis supplied)²⁴ In fact, the very purpose of the *Third Report and Order* was to remove the kinds of regulatory barriers that now stifle competition in the dispatch market – with the Commission seeking “a regulatory environment in which carriers can take advantage of technological innovation to modify their service offerings to compete against other carriers in trying to serve emerging consumer needs and demand for new and varying types of wireless services.”²⁵

SAFE members are seeking to achieve just that – a regulatory environment in which dispatch providers can take advantage of technological innovation to modify their service offerings to compete against other carriers in trying to serve the needs and demands of their dispatch customers for new wireless services. Without the ability to utilize all of the spectrum resources for the conversion to digital high-density cellular systems, as Nextel has done, SAFE members are greatly disadvantaged competitively.

Applicants further rely on a Wireless Telecommunications Bureau statement that “800 MHz SMR [is viewed] as one of many competitive services within the larger CMRS marketplace.”²⁶ This statement was made in the context of denying challenges to Nextel acquisitions of SMR licensees, on the basis that the “proposed merger will eventually squeeze small SMR systems out of business.”²⁷ However, the applications were granted in substantial

²⁴ *Third Report and Order* at 37.

²⁵ *Third Report and Order* at 41.

²⁶ *Joint Opposition* at 15, fn. 44, citing *OneComm* at 27 and *In re Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Order, 10 FCC Rcd 7783, para 17 (1995) (“*Motorola 1995*”), recon. denied, 15 FCC Rcd 4562(2000).

²⁷ *OneComm* at 30.

part due to the existence of competitors to Nextel at the time, who no longer exist due to Nextel's acquisitions and mergers.

Finally, it is worth noting that the Joint Opposition fails to include any support from Sprint's or Nextel's consulting economists for the notion that the dispatch market no longer exists. In addition, the CMRS competition reports cited above are more recent – by at least five years – than all but one of the Commission decisions cited in the Joint Opposition to support the argument that there is no separate dispatch market. Further, as discussed above, each one of the cases cited by Applicants actually support SAFE's positions.

V. THE ANALYSIS OF THE PROPOSED MERGER'S IMPACT ON COMPETITION IN THE DISPATCH MARKET SHOULD MIRROR THE ANALYSIS REGULARLY UTILIZED BY THE COMMISSION.

As noted in the *Ninth Report*, “market concentration is a necessary, but not a sufficient structural condition for unilateral or coordinated anti-competitive behavior to occur.”²⁸ As noted in the previous reports, there is clearly market concentration in the dispatch market. Further, the *Ninth Report* states, “[i]f entry into a market is easy, then entry or the threat of entry may prevent incumbent operators from exercising market power, either collectively or unilaterally, even in highly concentrated markets.”²⁹ Thus, if the dispatch market did, indeed, have low barriers to entry, this merger's threat to competition would not be so great. However, this is not the case. As the *Ninth Report* further notes, “[b]arriers to entry [. . .] may include first-mover advantages, large sunk costs, and access to spectrum.”³⁰ This merger unquestionably raises the barrier to entry in the dispatch market by limiting competitors' access to spectrum.

²⁸ *Ninth Report* at 80.

²⁹ *Id.*, citing *See DOJ/FTC Guidelines* at §3.0; *see also* Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* (3rd ed., Addison, Wellsley, Longman, Inc., 1999), at 77.

³⁰ *Ninth Report* at 80, citing *Spectrum Aggregation R&O*, 16 FCC Rcd at 22688-91, ¶¶ 39-43.

The *Ninth Report* identifies three primary factors which might limit a CMRS competitor's access to spectrum:

- 1) First, "the total amount of spectrum allocated to CMRS services and, of the spectrum that has been allocated, the amount actually assigned to users."³¹
- 2) Second, the extent to which "the Commission's rules afford carriers the flexibility to choose what services to offer and what technologies to deploy on spectrum allocated to mobile telephony services, including the freedom to upgrade their existing systems and services to more advanced next-generation standards."³²
- 3) Finally, the extent to which an operator may, "subject the Commission's authorization and approval, . . . buy and sell licenses, in whole or in part, on the secondary market."³³

All three factors are present in the facts of the proposed merger. The first factor is present because the spectrum assigned to certain Nextel competitors (*i.e.*, SAFE members) cannot be utilized competitively. Even though SAFE members planned to construct competitive digital facilities, having gone to auction and acquired the necessary additional spectrum licenses to construct those facilities, they are not free to fulfill those plans to remain robustly competitive with Nextel. They are constrained by the recently adopted limits on their use of their assigned, site-specific spectrum resources. Nextel not only holds licenses for almost all of the existing spectrum in which an entity could offer both dispatch and integrated mobile telephony services, it is now acquiring *additional* spectrum via the merger in which it can offer similar services.

³¹ *Ninth Report* at 81.

³² *Ninth Report* at 83, citing 47 C.F.R §§ 20.901(a) and 24.3.

³³ *Ninth Report* at 84.

The second factor is also present in the proposed merger. The *Ninth Report* recognized that “[s]pectrum allocation and assignment create a potential barrier to entry into mobile telecommunications markets because a limited amount of spectrum is allocated to CMRS and carriers need to obtain a government-issued license in order to use such spectrum for the provision of CMRS services.”³⁴ SAFE members, as Nextel’s only significant dispatch competitors in certain regional markets, have no ability to compete on a level technological playing field. Restrictions in the Commission’s recently adopted 800 MHz band plan are the cause. Thus, by strengthening and improving Nextel’s position in spectrum that can be used to compete in the dispatch and integrated dispatch/mobile telephony markets, the proposed merger does additional harm to competition in the affected regional dispatch markets.

In a passage that serves here to highlight the threat to competition that the proposed Sprint/Nextel merger creates by raising the barrier to market entry, the Commission observes that:

SMR systems have also had the ability to offer interconnected service, but until the development of digital technologies, analog SMR systems had limited capacity to provide mobile telephony. In recent years, however, the nature of SMR service has evolved significantly. SMR providers such as Nextel and SouthernLINC, a unit of energy concern Southern Company, have used digital technologies to increase spectral efficiency and to become more significant competitors in mobile telephony, while also providing dispatch functionality as a part of their service offerings.³⁵

Finally, the third factor is present, too. A combined Sprint/Nextel entity will have absolutely no incentive to provide their sole viable competitors in the dispatch market with

³⁴ *Ninth Report* at 81.

³⁵ *Ninth Report* at 89 (footnote omitted). See also *Eighth Report* at 23 (making a nearly identical finding); *Seventh Report* at 10 (making a nearly identical finding); *Sixth Report* at 10-12 (making a nearly identical finding).

access to spectrum through secondary markets. With the advantage of spectrum barriers to entry limiting competition in certain regional dispatch markets, a merged Sprint/Nextel would quickly rid itself of all competitors in these dispatch markets, by any means available. It is inconceivable that the merged entity would voluntarily make spectrum resources available to these remaining competitors under any circumstance.

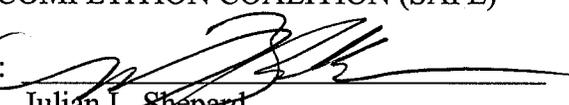
VI. CONCLUSION

The Applicants failed to meet their burden of proving the proposed merger is in the public interest. When invited by the SAFE Petition to Deny to submit an analysis of the proposed merger's impact on competition in the dispatch market, the Applicants chose to argue that there is no dispatch market. In their perfunctory response to the SAFE Petition, not only have the Applicants not responded adequately to the issues raised, they have completely avoided some other vital issues raised in the SAFE Petition, such as E911 compliance. Consequently, the Application is not complete and there remain significant issues outstanding. The Application should be designated for hearing on these issues, and the Commission should impose appropriate conditions to protect the public by ensuring future competition in dispatch services in certain regional markets.

Respectfully submitted,

SAFETY AND FREQUENCY EQUITY
COMPETITION COALITION (SAFE)

By:


Julian L. Shepard

Mark Blacknell

Williams Mullen, A Professional Corporation

1666 K Street, N.W., Suite 1200

Washington, DC 20006-1200

(202) 833-9200

Its Attorneys

April 18, 2005

CERTIFICATE OF SERVICE

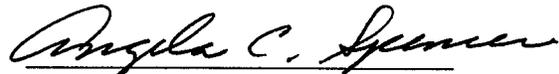
I, Angela C. Spencer, do hereby certify that on this 18th day of April, 2005, a copy of the foregoing "SAFE Competition Coalition Reply to Joint Opposition to Petitions to Deny" was served by first class United States mail, postage prepaid, addressed to:

Robert Foosaner
Senior Vice President and Chief
Regulatory Office
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Richard Metzger, Jr.
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
Counsel for Nextel Communications, Inc.

Vonya McCann,
Senior Vice President, Federal External Affairs
Sprint Corporation
401 9th Street, NW, Suite 400
Washington, DC 20004

Philip L. Verveer
Willkie Farr & Gallagher, LLP
1875 K Street, NW
Washington, DC 20006
Counsel for Sprint Corporation


Angela C. Spencer