

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

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

**REPLY OF
COMMUNITY TECHNOLOGY CENTERS' NETWORK**

1436 U Street, NW
Suite 104
Washington, DC 20009

April 18, 2005

TABLE OF CONTENTS

SUMMARY	iii
I. Introduction.....	3
II. CTCNet’s Arguments Are Merger Specific Issues That Must Be Considered in this Proceeding as Part of The Commission’s Public Interests Analysis.....	4
III. The Applicants Essentially Confirm that CTCNet’s Analysis of their Combined Market Holdings is Correct.....	10
A. An Examination Based on GSAs, Rather than BTAs, is the Most Appropriate Way to Accurately Assess the Applicants’ Level of Ownership and Control Within Key Major U.S. Population Centers and Regions.	12
B. Even the Applicants own Misleading BTA Analysis Depicts a Post Merger Company with an Unhealthy Level of Control in the Top 50 BTAS	13
C. The Commission Must not be Taken in by the Applicants’ Attempt to Further Obscure the Level of Control they hold in these markets by arguing that Leased Spectrum may become available to Competitors in the Near Future.	16
1. The Validity of CTCNet’s Analysis is Easily Demonstrated through Simple Case Studies.	17
2. CTCNet’s Case Studies Show that the Post-Combination Company would Control Virtually All the EBS-BRS Spectrum Covering the Vast Majority of the Population Located within the BTAs.....	21
IV. Contrary to the Applicants’ Claims, Wireless Broadband is a Distinct Market Segment over which the Post-Merger Entity would exert an Unhealthy Degree of Market Power.	23
A. Contrary to the Applicants Assertions, Equipment is Currently Available for the Launch of Clearly Identified Wireless Broadband Services on Interference Free, Pre-Transition Blocks of BRS-EBS Spectrum.	27
B. Contrary to the Claims of the Applicants, Other Potential Spectrum Bands for Wireless Broadband Services are neither practical for use or Available Today to Competitors for the Launch of Competitive Wireless Broadband Services.....	30
C. The International Community has designated the 2.5 GHz band for Wireless Broadband Data Services.....	35
V. Given the Importance of This Spectrum, the Sheer Size of the Proposed Merger, and the Concentration of Post Merger Holdings, A Hands Off Policy Would Not be Appropriate in this Instance.....	36
VI. Conclusion	38

EXHIBITS

Exhibit 1	CTCNet Background Information
Exhibit 2	John Zoltner March 30, 2005 Certificate of Service
Exhibit 3	Nextel Spring Lease Summary Detail: 6 Case Studies
	A. Boston, MA
	B. Chicago, IL
	C. Dallas/Ft. Worth
	D. Denver, CO

	E. Houston, TX
	F. Providence
Exhibit 4	Case Study Markets GSA Maps
Exhibit 5	ITU International Spectrum Allocation Chart

SUMMARY

CTCNet, and its member network of local community technology centers, dedicated to ensuring the availability of technology and training for underprivileged citizens, hereby submits its Reply, again urging the Commission to either deny the proposed Transfer of Control Application of Nextel Communications, Inc. and Sprint Corporation, or condition any grant of such Application on the divestiture of sufficient spectrum holdings and lease rights so as to ensure availability of sufficient BRS and EBS spectrum for new competitive entrants into what even Sprint has acknowledged to be a distinct new un-tethered wireless broadband services marketplace. CTCNet and its members would be directly and adversely affected by the excessive degree of market concentration that would result from this combination, the preclusion of competition in the new wireless broadband services marketplace, and the combination's negative inevitable effect on prices and services.

Contrary to the assertions of the Applicants, the issues raised by CTCNet's Petition to Deny regarding the high degree of concentration and resultant market power from the combination of the two remaining major regional operators with substantial 2.5GHz assets are "merger-specific" and must be properly considered as part of the Commission's public interest analysis. Further, Sprint should not now be allowed to argue that such competition preclusion issues concerning spectrum combinations be considered only in a rulemaking proceeding, where it has previously argued that such evaluations are more appropriate on a case-by case basis, such as in the instant proceeding.

The Commission must not allow itself to be misled by the Applicants' attempt to diminish the significance of their combined holdings by diluting them through statistical inclusion of unrelated areas and unavailable EBS white space. The Applicants took issue with, but were unable to point to, specific significant defects in CTCNet's properly conducted GSA-based analysis demonstrating the unhealthy concentration levels of the combined post-merger company's 2.5 GHz holdings. CTCNet establishes herein that even analysis of the Applicants' data suggests the same conclusions. CTCNet also provides six in-depth market studies discrediting attempts by the Applicants to claim that substantial portions of their leased 2.5 GHz spectrum may soon be available to competitors. Instead, CTCNet demonstrates that current mid-term renegotiations and long-term post-termination rights make it unlikely that any significant amount of 2.5 GHz spectrum under lease to Sprint or Nextel will soon become available to competitors. Further, CTCNet demonstrates that the merged entity's control over the population centers in a majority of the top fifty markets will preclude serious national competitive entry.

Contrary to Applicants' assertions, other spectrum outside the 2.5 GHz band will not soon be available to competitors, since no auctions have been scheduled, substantial band clearing would be needed, and no equipment has ever been developed that will operate on such bands. Conversely, the 2.5GHz band has been designated internationally and configured domestically for broadband use, and contrary to the self-serving protestations of the Applicants, is usable today for clearly defined services using currently available equipment. Accordingly, because such a combination would effectively frustrate the Commission's goal of promoting competition in the 2.5 GHz

band and would act as a bar to competitive national entry in the fledgling wireless broadband market, the Commission must not adopt a hands-off approach, but must instead, at a minimum, condition the grant of the combination on the divestiture of sufficient spectrum in the 2.5GHz band to ensure competition.

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

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

To: The Commission

**REPLY OF
COMMUNITY TECHNOLOGY CENTERS' NETWORK**

Community Technology Centers' Network ("CTCNet"), hereby submits its Reply to the Joint Opposition filed on April 11, 2005 ("Joint Opposition") by Nextel Communications, Inc. ("Nextel") and Sprint Corporation ("Sprint") (collectively the "Applicants").¹ CTCNet believes that approval of the February 28, 2005 application for transfer of control ("Application") regarding the Nextel and Sprint-licensed GSAs in the 2.5 GHz Band, and spectrum leases to additional GSAs held by Nextel and Sprint, will result in an excessive concentration of market power in the wireless broadband industry, a reduction in the potential for the availability of competitive wireless broadband services, and a resultant negative impact on the cost of such services to consumers. Through arguments that more closely resemble slight-of-hand than actual substance, the Applicants attempt to simply make their detractors, the arguments raised, and the serious implications of the proposed merger disappear right before the Commission's eyes. In the utopian world envisioned by the Applicants in their Joint Opposition, the Commission

¹ CTCNet's Reply is timely filed in accordance with the pleading schedule established by the Commission in its Public Notice DA 05-502, released February 28, 2005.

would disregard its key spectrum management goal of promoting competition, explicitly underlying its recent rule changes affecting the 2.5GHz band, as well as the preclusionary effect of the merged company controlling substantially all available commercial spectrum in the major population centers of 30 of the top 50 BTAs and substantially all usable spectrum in 24 of those markets, and hold that if competition were ever desired, the Commission could reach into its bottomless bag of spectrum and allocate another prime block of 198 MHz nationwide for wireless broadband services.

While CTCNet does not argue with the Applicants' conclusion that the combination would create beneficial efficiencies and a company with truly national reach on the 2.5 GHz Band, it continues to maintain that the benefits of such a combination need not and must not, be achieved at the expense of competition within the fledgling wireless broadband services industry, and the creation of a potential nationwide monopoly provider of wireless broadband services on the 2.5GHz band. Accordingly, CTCNet renews its request that the Commission either deny the Application, or specifically condition its grant on the divestiture of sufficient licenses and/or leases in the 2.5 GHz band to ensure that the combined Sprint/Nextel entity owns or leases at any time no more than five (5) BRS channels located in the upper band segment ("UBS"), and has control through ownership, lease, letter of intent, right of first refusal or other contractual right, to no greater than 12 of the 26 commercially usable UBS or lower band segment ("LBS") channels, in any of the urban Major Markets defined by GSAs in the top 100 BTAs in the United States. By imposing such a condition on the grant of the Application, the Commission will ensure the availability of sufficient spectrum for new

competitive entrants to the wireless broadband marketplace, as is required in the public interest.

I. Introduction

CTCNet and its membership of more than one thousand local community organizations are dedicated to providing education by the use of technology tools, such as broadband Internet access and computer training, to citizens that may not otherwise have access to information technologies and services. CTCNet depends upon robust competition among communications service providers to ensure lower cost equipment and services to the economically disadvantaged citizens they serve. Because many of CTCNet's community centers are located within portions of communities not passed by traditional wired broadband services, CTCNet is uniquely interested in the deployment of competitive un-tethered wireless broadband services in the 2.5 GHz spectrum band.² Accordingly, CTCNet and its members would be directly injured by a grant of the Application, which will result in an unhealthy level of market concentration in the EBS-BRS spectrum band and wireless broadband services industry, effectively foreclosing the availability of meaningful competition in many markets, including those served by CTCNet and its members, and will consequently lead to spectrum warehousing, delays and price gouging.³

² Attached at Exhibit 1, is a more detailed description of CTCNet's organization and why the outcome of this proceeding is critical to the ability of its members and to the public they serve, to obtain cost effective access to advanced wireless broadband services, and why the CTCNet community of members will be harmed if this combination is authorized on the basis requested in the Application.

³ In the Joint Opposition, the Applicants half-heartedly attempt to take issue with CTCNet's standing in this proceeding under 47 USC § 309. However, as indicated above, CTCNet and its members will be directly and significantly harmed by the loss of any potential price competition within the wireless broadband services market, and therefore have adequate standing to file a Petition to Deny in this proceeding. Additionally, the Applicants argue that the Commission should disregard the substance of CTCNet's Petition because it was not accompanied by a proof of service. However, CTCNet did serve the

II. CTCNet's Arguments Are Merger Specific Issues That Must Be Considered in this Proceeding as Part of The Commission's Public Interests Analysis.

Despite focusing the bulk of the Joint Opposition on CTCNet's analysis regarding the potential harm to competition and disservice to the public of a grant of the Application as requested, the Applicants generally attempt to derail consideration by the Commission of these issues, claiming they are not harms that would be a direct result of the merger and therefore are not relevant to the Commission's public interest analysis of the Application. However, CTCNet's assertion that any combination of the two largest stakeholders in the 2.5 GHz Band will result in an unhealthy concentration of market power that would effectively bar any entry of competition in at least 24 of the top 50 US Markets, and would effectively remove the prospect for any competition on a national basis, are most certainly "merger-specific" issues, and therefore must be considered in this proceeding as part of the Commission's public interest analysis. As discussed below, the mere fact these entities currently hold regional swaths of 2.5GHz spectrum, with mostly separate local monopoly and near local monopoly holdings, does not, as the Applicants would have the Commission believe, render their combination immune from antitrust concerns.

Applicants' counsel. CTCNet timely placed a copy on the FCC's electronic website, and complied with all service requirements contained within the Public Notice. The Applicants' do not allege that they did not receive such service, that they were unaware of the pleading, or that they were in any way prejudiced by the omission of a proof of service. Instead the Applicants shamefully attempt to game the Commission's processes in order to avoid the examination of legitimately raised public interest arguments by misquoting a procedural rule. In fact, 47 CFR § 1.47 states that "failure to make proof of service will not affect the validity of the service," and that "the Commission may allow the proof to be amended or supplied at any time." Accordingly, CTCNet respectfully requests that the Commission accept at this time the inadvertently omitted certificate of service for CTCNet's March 30, 2005 Petition to Deny, which states that all required service was timely made. See Certificate of Service at Exhibit 2.

Were the Commission faced with a request by the two largest incumbent local exchange carriers in the United States, Verizon and SBC, for approval of the combination of their monopoly wireline local telephone exchange services networks, surely the issue of whether approval of the combination of the two entities' landline networks located in numerous respective individual major market areas in very large regions of the U.S. would create a larger national post-merger company with market power that would enable the combined company to engage in anti-competitive activity, including predatory pricing and other competitive harms, would be a critical and significant merger-specific issue at the forefront of all issues raised by such an application.

As cited by the Applicants in the Joint Opposition,⁴ the fact that other regional operators such as BellSouth in its merger with Cingular, with substantially lesser holdings in the 2.5 GHz band, were permitted by the Commission to continue holding substantially all of the BRS-EBS spectrum in a small handful of markets in the southeastern United States does not provide any reasonable excuse for the present Commission not to scrutinize on an antitrust basis and in the public interest, the present proposed combination that would create a company with monopoly or near monopoly holdings in the 2.5GHz band on a near nationwide basis.⁵ The fact that previous mergers were of lesser concern from an anticompetitive viewpoint does not make it inappropriate to consider the preclusionary effects of such large scale spectrum combinations on a case-by-case basis. Certainly the fact the Commission allowed Nextel to acquire the 2.5GHz

⁴ Joint Opposition at 22.

⁵ CTCNet acknowledges that some spectrum in the market areas below the top 50 BTAs (e.g. secondary and tertiary markets) may still be available to competitors, but this is not sufficient spectrum availability for any one competitor to be a truly national player.

assets from another bankrupt telecommunications company, WorldCom, should have no bearing in the present unprecedented case for the same reason the BellSouth-Cingular approval does not. Further, in such instances, the continued existence of Sprint as a major stand-alone competitor also diminished the level of concern with the creation of another large and financially sound regional spectrum holder in Nextel or BellSouth.

Notwithstanding the Applicant's attempt to pull the wool over the Commission's eyes by simply dismissing CTCNet's important claims and evidence presented about the combined companies significant individual major market holdings that would be brought together if this Application were approved as requested, the Applicant's fail to acknowledge that the antitrust laws and the Commission's public interest responsibilities are not concerned solely with whether a post merger company would have greater market power within individual major market areas, but rather are and must be, focused on whether the combined company would create an even larger company with much greater market power in the provision of the wireless broadband services in local markets on a national basis, leaving no meaningful amount of spectrum available for any other national competitor.

All logic and evidence presented dictates that having Nextel, which for the most part controls the 2.5GHz spectrum in more than a third of the Major Market Areas located within the top 50 U.S. BTAs, combined with Sprint, which for the most part also controls the 2.5GHz spectrum in more than a third of the Major Market Areas located within the top 50 U.S. BTAs, would create a single post-combination company with control over a majority of all 2.5GHz spectrum in the Major Market Areas located within the top 50 U.S. BTAs. From an antitrust and public interest standpoint, this combination

is similar to a potential combination of Verizon and SBC, which in their individual capacities have a monopoly or near monopoly control of the landline telephone market in the vast majority of the major market areas located in large regional areas of the United States.⁶

Here, the current pre-combination Sprint and Nextel are in an analogous position with respect to the 2.5GHz spectrum. As in the case of a post combination Verizon-SBC, the Sprint-Nextel consolidation raises major antitrust and public interest concerns regarding the potential for post-combination anti-competitive behavior of the combined entity, just as would be raised in a merger proceeding concerning Verizon-SBC. These would clearly be considered merger-specific issues. Thus, as would be the case if Verizon and SBC proposed to merge, CTCNet's analysis squarely tees up the proper questions for Commission consideration regarding whether the nationwide combination of the sheer near monopoly spectrum holdings of the individual companies at issue in the present Application would be in the public interest.

As is the current case with Nextel and Sprint, having two separate companies which control the vast majority of the 2.5GHz spectrum in a roughly equivalent number of Major Markets Areas located within the top 50 U.S. BTAs, at least ensures there are market forces to create an incentive for the two respective companies to swap surplus 2.5GHz spectrum assets in these markets to enable each individual company to achieve the national reach and economies of scale that each company may desire. Having at least

⁶ Just like there exists some available BRS-EBS spectrum in secondary and tertiary markets in the U.S. that is not controlled by Nextel or Sprint, there are also secondary and tertiary telephone markets located within the larger regions primarily controlled by Verizon and SBC, where many independent local exchange carriers exist and are providing services. This does not change the analysis of the degree of control that a combined Verizon-SBC would have over the entire national landline telephone market. The fact that some areas within the BRS/EBS spectrum still remain available for competitors should not distract evaluation of

two wireless broadband competitors in all 50 of these markets would also ensure there exists (i) no predatory pricing and monopoly rate making; (ii) incentive for competing vendors to serve the needs of competitors; (iii) incentive for technology development for efficient use of the spectrum and evolution for competing services; and (iv) most importantly, a competitive secondary spectrum market for the lease of spectrum assets of EBS and other BRS holders. In this respect, a post combination company controlling the 2.5GHz spectrum in these Major Market Areas would substantially create a “sole source buyer” of spectrum assets, which would deflate the secondary market values for spectrum capacity lessors nationwide, and would force lessors to either take a Nextel-Sprint offer or face the prospect of receiving nothing. Such pricing power for spectrum in the secondary spectrum markets would surely affect smaller markets not controlled by the merged entity as well. There, the merged entities’ pricing in major markets will act as a cap on industry prices. This raises antitrust concerns in and of itself, considering the post-combination company could use its market power to set the market price for the lease of spectrum in the secondary spectrum markets.

Based on their current stranglehold over the license and lease holdings in the 2.5GHz spectrum in these markets as demonstrated by CTCNet, without the Commission requiring divestiture of sufficient spectrum to be made available to competitive entrants in these markets as part of any approval of this Application, any competitor would likely be unable to penetrate any of these markets and roll out any competitive alternative. The Applicants’ control over directly licensed BRS spectrum in these markets aside, by the time most current BRS and EBS leases expire (and all post termination rights the

the proposed Nextel-Sprint combination for near complete control over spectrum in major markets on a nationwide basis.

Applicants' hold are concluded),⁷ assuming Nextel-Sprint are for any reason unable to renew any of these leases, the lease of capacity in these market by would-be competitors may never occur, as Sprint-Nextel will likely have an established presence in each of the markets, and any competitor would be unable to enter the market and effectively compete against this powerful incumbent. This would be an unfortunate case of too little to late for the possibility of competition in the new wireless broadband services marketplace, unless this combination is prohibited on the basis requested by CTCNet.

The Applicants also attempt to deflect attention from the serious nature of the merger-specific issues raised by CTCNet claiming that issues relating to the overall size, or market-by-market concentration of 2.5 GHz spectrum that will be controlled by the post merger entity, rather than the increase in individual market concentrations that will result from the combination, could have been raised in a recent industry rulemaking proceeding.⁸ The Applicants further criticize CTCNet for having failed to participate in and raise such concerns as part of that rulemaking proceeding. However, what the Applicants conveniently overlook is the simple fact that at the time the Commission was considering such issues, Sprint and Nextel had not yet proposed their merger, and it still appeared that there would remain at least two spectrum holders in the 2.5 GHz band of sufficient size to ensure the possibility of multiple national providers within the fledgling wireless broadband services market. Additionally, in WT Docket 03-66, Sprint itself

⁷ As CTCNet demonstrates in the Case Studies summarized *infra* at Section III (c), the 2.5GHz spectrum currently leased by Nextel and Sprint in these markets will be under their control for years to come. Although these entities simply do not need all of the spectrum they control in these markets, having the ability to warehouse the spectrum for several more years will give Nextel and Sprint the opportunity to control the provision of wireless broadband service in these markets before any potential competitor ever has a chance to acquire even a minimal amount of 2.5GHz spectrum to deploy a competing service.

⁸ Joint Opposition at p. 19.

embraced a case-by-case methodology for examining competitive imbalances rather than for the Commission to adopt an absolute ban on certain ownership combinations.⁹ It is therefore somewhat hypocritical for the Applicants to now be arguing that competition preclusion issues arising out of the proposed spectrum combinations should only be dealt with in the context of a rulemaking proceeding and not on a case-by-case basis such as in their own Application.

III. The Applicants Essentially Confirm that CTCNet's Analysis of their Combined Market Holdings is Correct.

While the Applicants appear to have spent a great deal of time reviewing CTCNet's analysis, they only identify two specific instances where CTCNet's analysis of their holdings was in error.¹⁰ In one case due to a typographical error, CTCNet attributed control of one station to both merging companies. However, the Applicants did not argue that the station should not be attributed to the merged entity. The second error identified by the Applicants' concerns six channels in Jacksonville, Florida, one of the few top 50 BTA markets in which CTCNet's analysis did not show that the merged entity would control a vast majority of the available 2.5 GHz spectrum. While Sprint does claim to have conducted equipment tests with IP Wireless in Jacksonville,¹¹ it appears that certain stations attributed to them were assigned to BellSouth by a predecessor in interest prior to such company being acquired by Sprint. Accordingly the relatively minor 23% control

⁹ See Reply Comments of Sprint Corporation in WT Docket 03-66, submitted on October 23, 2003, at p24 ("Sprint agrees with the various commenters that advocate a case-by-case approach for addressing any competitive imbalances that may materialize.")

¹⁰ Joint Opposition at footnote 55.

¹¹ See Comments in Support of Petition for Reconsideration in WT Docket 03-66 Submitted by Sprint Corporation on April 8, 2003, at p.3.

attributed to Sprint in Jacksonville would actually be 6%.¹² These are, for all intensive purposes, harmless errors that do not change CTCNet's overall analysis, the overall accuracy of which the Applicants do not refute.

While CTCNet correctly accused the Applicants of systematically manipulating their data to create the false impression that the combined companies will not in fact control most of the available spectrum within the population centers of the top 50 BTAs, the Applicants counter that CTCNet over-inflates their holdings relative to the BTA by excluding their competitors GSAs in less populous or rural areas.¹³ The Applicants argue that CTCNet's focus on major urban markets is inapplicable and that the Commission should focus on spectrum that the merged entity will control over wide geographic areas, which may include unrelated smaller and distinct markets within BTAs, and include white space spectrum that is not presently available to competitors. The Commission must not allow itself to be taken in by the Applicants' self-serving methodology that ignores the importance of Major Market Areas to the potential of any meaningful nationwide competition in this band, and artificially dilutes the relative concentration of the major market holdings of the proposed combination under examination across a large sparsely populated swath of land within each BTA.

¹² Such error does not change any of the statistical conclusions reached by CTCNet in its Petition to Deny. While the Applicants attempt to discredit the CTCNet analysis by further stating vaguely that they believe that CTCNet overstated their leased spectrum holdings in numerous markets, they offer no examples of such alleged overstatement.

¹³ Joint Opposition at pp. 31-32. However, the Applicants make no attempt to create a case study or identify whom such competitors might be. CTCNet's understanding is that after years of spectrum aggregation, and with the exception of the five major markets controlled by BellSouth, the BRS-EBS wireless broadband industry is essentially witnessing the final combination of major regional players in the 2.5 GHz spectrum, thereby eliminating any potential for true nationwide competition on this band in the largest U.S. Markets.

A. An Examination Based on GSAs, Rather than BTAs, is the Most Appropriate Way to Accurately Assess the Applicants' Level of Ownership and Control Within Key Major U.S. Population Centers and Regions.

Contrary to the Applicants assertions, and as demonstrated by CTCNet in its Petition to Deny, for over forty years EBS and BRS applicants applied for and were licensed on a site-by-site basis. Ultimately, such stations were provided thirty-five mile protected service areas for the provision of commercial services.¹⁴ Commercial operators attempting to aggregate channels to create multi-channel systems historically sought to collocate such stations in order to provide service to specific areas, usually focusing their efforts on urban population centers. As with television and radio, such commercial wireless operators targeted sales and advertising toward such major cities and population centers. While the Commission later attempted to give commercial operators access to areas lying on the outskirts of such population centers by auctioning off remaining bits and pieces of 2.5GHz spectrum around the major market areas and population centers of the U.S. inside the BTAs (e.g., like auctioning holes in Swiss cheese, where the cheese is spectrum historically licensed on a site by site basis), comparatively few stations were ever licensed on the basis of such BTA holdings, and operators' failures to satisfy the build-out requirements for such BTA authorizations has been a sore point with the Commission ever since. Thus, the Applicants' attempt to

¹⁴ These protected service areas with a truncation of any overlap areas became the basic geographic unit recently adopted by the Commission for existing EBS and BRS stations in WT Docket 03-66. See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order ("*Report & Order*") and Further Notice of Proposed Rulemaking ("*FNPRM*"), FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004) at ¶ 54.

claim the BTA as the basic licensing unit for this spectrum is simply incorrect and self-serving.¹⁵

Contrary to the Applicants' assertions, CTCNet's analysis accurately depicts the unhealthy levels of control the combined entity would wield in the 2.5 GHz spectrum band within major urban areas within the top 50 BTAs. Additionally, having been compiled from information from public sources, CTCNet's analysis is independently verifiable.¹⁶

B. Even the Applicants own Misleading BTA Analysis Depicts a Post Merger Company with an Unhealthy Level of Control in the Top 50 BTAS

As discussed by CTCNet in its Petition to Deny, the BTA analysis methodology used by the applicants attempts to systematically depress the apparent concentration of spectrum that will be held by the merged entity in major markets, by including in the analysis large unrelated rural and less populated secondary and tertiary distinct market areas that happen to fall within the same BTAs,¹⁷ and by including populations covered by large amounts of unlicensed EBS white space spectrum, which the Applicants'

¹⁵ CTCNet challenges the Applicants to identify the proportion of licensed stations that they hold or lease that were licensed based on a BTA authorization, shown as a percentage of the total number of stations that they hold or lease. CTCNet suspects that BTA based stations when compared to GSA based stations would comprise well under ten percent of the Applicants' owned or controlled stations, and would cover a small fraction of the overall population covered by all their 2.5GHz spectrum holdings in any population centers.

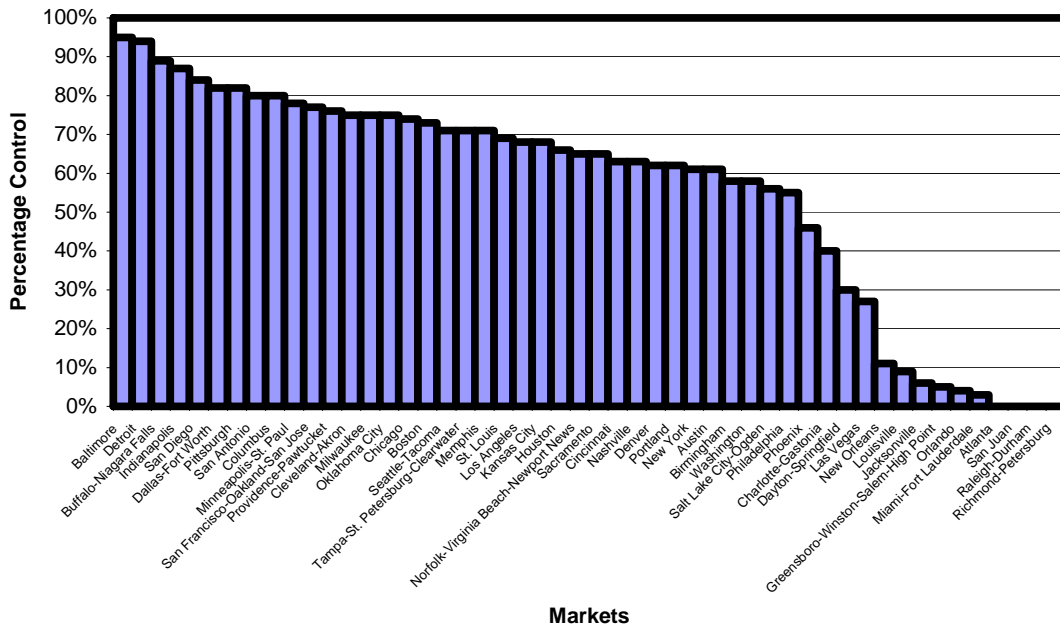
¹⁶ In compiling the data underlying its analysis in this proceeding, CTCNet used all available sources of information to identify the channel groups that properly constitute the GSAs for the major population centers located within each of the top 50 BTAs, and to determine whether the Applicants' controlled such channels. All information in the Commission's ULS and BLS databases, and the public reference room, was reviewed and analyzed in the analysis.

¹⁷ Contrary to the Applicants misleading assertions in their Joint Opposition, their methodology does not overestimate the concentration of the merged entities holdings. See Joint Opposition at p. 32. Such methodology merely overstates the number of markets where the two companies have overlapping spectrum holdings, but as noted above and in CTCNet's Petition to Deny, the methodology misleadingly and systematically reduces the apparent size and significance of each company's holdings in individual markets.

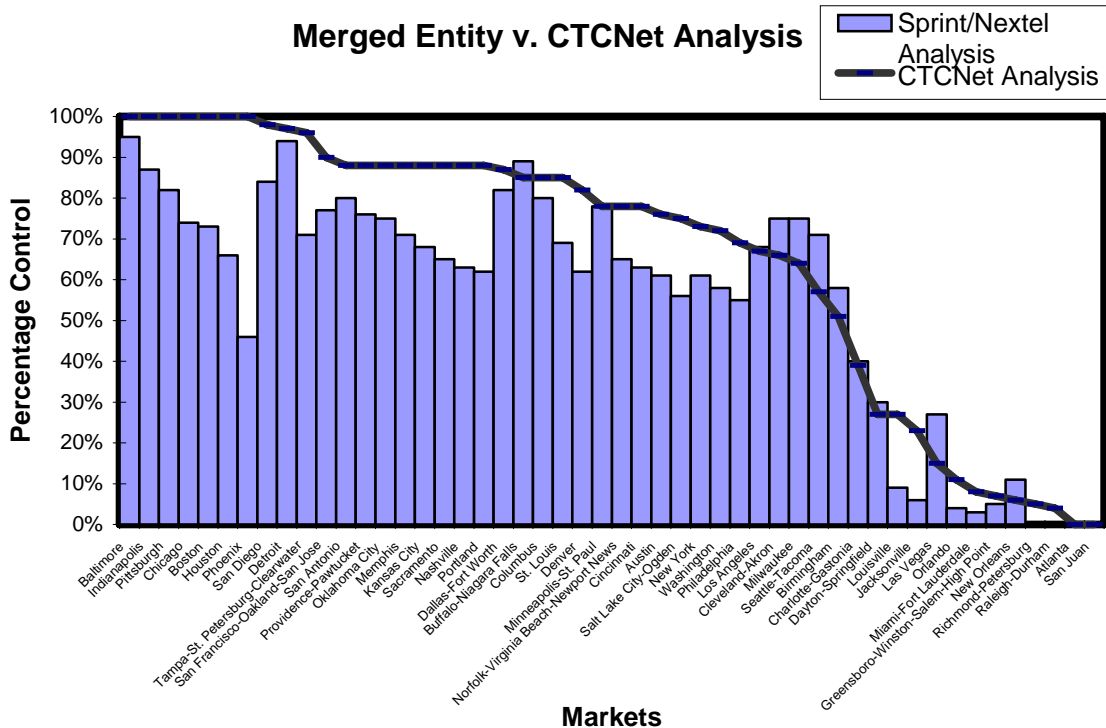
concede may never be made available to commercial service providers.¹⁸ Nonetheless, even considering the Applicants' own BTA analysis, the Applicants' themselves demonstrate to the Commission that the merged entity will control on average over 65% of the 198 MHz block of spectrum in the EBS/BRS band allocated in the top 50 BTA markets. Specifically, by their own analysis, the post combination entity will control more than 80% of all BRS-EBS spectrum in 9 of the top 50 BTAs; more than 70% in 20 of the top 50 BTAs; over 60% in 32 of the top 50 BTAs, and over 50% in 36 of the top 50 BTAs. The following chart depicts that the Applicants' own watered down analysis also clearly indicates that the post merger entity would hold a disconcerting level of control of the EBS-BRS spectrum in the vast majority of the major population centers of the top 50 BTAs, and will thereby be in a position to use its market power to exclude entry of any other national or regional competitor to the wireless broadband marketplace if this combination is permitted.

¹⁸ The Applicants' also take issue with CTCNet's argument that if considered at all, white areas should be attributable to the post-combination entity where it would hold the BTA rights, because Sprint has argued that it be given a one time exclusive opportunity under the wireless cable exception to license such frequencies for commercial use prior to there being made available to educational licensees. The Applicants' attempt to throw up a smoke screen to defuse CTCNet's argument by claiming this right has hardly ever been used, and would only be available where no competing application was filed and where at least eight channels will remain available for EBS use. However, because this would be an exclusive right to the commercial BTA holder, no competing applications would be filed. Additionally, because the areas in question lie at the outskirts of largely collocated urban GSAs, sufficient channel vacancy should theoretically be available to allow the Applicants to pick up licenses on eight channels where they hold BTA authorizations. Such additional 48 MHz of spectrum in portions of each BTA, were it available white space, would certainly change the Applicants analysis of their holdings.

Total Control by Merged Entity: Top 50 BTA Markets As Reported by Nextel



Comparing CTCNet's analysis of the post-combination company's control in the Major Market Areas of the top 50 BTAs against the Applicants' analysis of their combined control of all spectrum in the top 50 BTAs shows a remarkable negative difference in the amount of control claimed by the Applicants. The following chart illustrates how the misleading analysis performed by the Applicants produces a significantly lesser picture of their control in these markets, albeit a significant amount of control nonetheless, as compared to CTCNet's properly depicted level of control using the correct GSA method of analysis.



C. The Commission Must not be Taken in by the Applicants’ Attempt to Further Obscure the Level of Control they hold in these markets by arguing that Leased Spectrum may become available to Competitors in the Near Future.

In the Joint Opposition, the Applicants argue on the basis of their flawed BTA based MHz/Pops analysis, and without regard to their absolute control of EBS-BRS spectrum in the majority of Major Market Areas located within the top 50 U.S. BTAs, that the majority of spectrum in the 2.5 GHz band will remain available to its competitors. To this end, in support of their claim that other available spectrum exists for competitors, the Applicants cite to the existence of presently unavailable and unlicensed EBS white space spectrum outside major population centers, and spectrum presently under lease to one or the other of the merging companies.¹⁹ The Applicants misleadingly state that leases accounting for 30% of the currently leased spectrum in the

¹⁹ Joint Opposition at pp. 25 & 33-34.

2.5 GHz band will expire within the next five years. However, the Applicants don't disclose what percentage of this leased spectrum is subject to: 1) automatic renewals; 2) exclusive negotiation provisions; 3) negotiations subject to binding arbitration; 4) non-compete provisions; and 5) rights of first refusal. The Applicants' glib assertion that many of their leases will expire within the next five years in no way discloses what percentage of such spectrum would actually be available to its competitors at that time, nor does it provide any indication whether there will actually be any opportunity for a new competitor to obtain access to any meaningful amount of spectrum to enter the market against the likely entrenched incumbent, the post combination Nextel-Sprint.

1. The Validity of CTCNet's Analysis is Easily Demonstrated through Simple Case Studies.

To demonstrate the lock on 2.5GHz spectrum the Applicant's currently have in the top U.S. Major Market Areas, and that they will have in the future in these areas, enabling them to deploy well established wireless broadband service businesses and prevent any possible entry by competitors, CTCNet examined in detail 6 separate Major Market Areas located within the top 50 BTAs, including 3 currently controlled by Nextel and 3 currently controlled by Sprint, where the Applicants' would control 100% or close to 100% of the entire 198MHz allocation to the BRS-EBS service in these markets ("Case Studies"). The BRS spectrum for which Sprint and Nextel are not directly licensed and that is leased by one of these two entities today in these markets was examined to determine what ability any potential competitor may actually ever have in the future to access any spectrum for wireless broadband services provision in these

markets. The following summarizes the conclusions reached by CTCNet in its existing lease Case Studies²⁰:

- i. *Some leases have not yet commenced and will therefore run for at least 10 years from their actual “Start Date.”* This is typically the case where the Nextel or Sprint lease was entered into around a decade ago, but the “Start Date” of the term of the lease was triggered by, for example, the lessee constructing a wireless cable system, obtaining its first customer in the market, or other similar occurrence that never happened. These leases have placed the lessor/licensee in a position where its spectrum has never been put to use by Nextel or Sprint, and may continue to be warehoused for an indefinite period of time in the future. The licensee/lessor in these cases may also be concerned about the seeming obligation it has to fulfill the terms of the lease for fear of default itself in the event of an attempted termination of the lease for non-performance or other claim of default by the lessee Applicants’ – clearly making the spectrum completely unavailable to any competitor for an unknown future period of time. Theoretically, these leases may never expire and the Applicants could claim they have indefinite rights to warehouse the spectrum subject to these agreements.
- ii. *The remaining lease terms average more than 5 years.* For the 39 leases in these six markets for which there is a discernable lease expiration date, the remaining term on the leases is for an average of more than 5 years. This means that for EBS/BRS channels in these markets not licensed to Sprint or Nextel directly, there is absolutely no chance for any competitor to get access to this

²⁰ Attached at Exhibit 3 is the complete analysis for each market summarized in detail, and including any pertinent documentation considered by CTCNet in its analysis.

spectrum for at least 5 years on average, except in the rare case where a single channel or channel group in the Major Market Area is actually not either licensed or leased by Sprint or Nextel.²¹ Further, many of these leases have remaining terms of more than 10 years.

- iii. *The leases contain strong post-termination rights in favor of the Applicants’.* 33 of the 48 active leases (69%) in these markets contain a right of first refusal (“ROFR”) provision granting the lessor the right to match any competing third party proposal for the lease of the channel capacity upon expiration of the lease term. Many of the ROFRs extend for 3 or more years from the lease expiration. Thus, even if a would be competitor could wait an average of more than five years for a lease to expire in one of these Major Market Areas so that it could have some limited ability to access 2.5GHz spectrum to roll out wireless broadband services in competition with the post-merger entity, its proposal for the lease of the spectrum would still be subject to Sprint-Nextel’s ROFR (veto) rights. Sprint-Nextel could essentially block any competitor from the use of these channels and entry into these markets for many more years after the leases actually expire.
- iv. *The leases generally do not allow any wireless broadband offerings.* The vast majority of the leases do not permit the lessee to use the spectrum capacity for uses other than to construct an analog wireless cable system – a failed and now dead industry and use of the EBS-BRS spectrum. Thus, before any wireless broadband services may be launched on the now re-purposed spectrum, as the

²¹ The number of channels in each of the six markets studied that are not either leased or licensed by Nextel or Sprint is as follows: Chicago – 0 of 33; Houston – 0 of 33; Boston – 1 of 33; Dallas/Ft. Worth – 3 of 66; Denver – 4 of 37; and Providence 6 of 33.

Applicants' correctly report in the Joint Opposition, these leases will have to be renegotiated.²² What the Applicants' fail to mention, however, is that under the current paradigm, these will most likely be one-sided negotiations in the Applicants' favor, while the leases are either in mid-stream or "have not yet commenced". If the Applicants' demands of licensees are not met to revise, renew and extend the current binding leases for significantly longer periods of time on their preferred economic terms, while re-upping and making stronger their post-termination rights in such leases, the Applicants' can simply hold the spectrum hostage for many years under the current analog only leases, while they develop an entrenched wireless broadband service in the markets on their adequate licensed BRS channels, thereby preventing any competition in the market, and depressing the present and potential future value of the spectrum to be used for new wireless broadband services, at the cost of these lessors.

While this study represents the leased spectrum availability status in only 6 of the Major Market Areas located within the top 50 BTAs, it may be validly postulated that there is a general pattern of the existence of similar circumstances surrounding the status of lease rights and related control of leased EBS-BRS spectrum in the remaining markets. As demonstrated by these Case Studies, Sprint and Nextel's claims regarding the definitive future availability of spectrum in the 2.5GHz band is false and misleading. The public interest requires the Commission consider only the facts with respect to Sprint-Nextel's true licensed and leased EBS-BRS holdings, and present and future control thereof, in analyzing the current and future potential access by competitors to this

spectrum and competition in the wireless broadband marketplace if this combination is permitted – and not the rosy picture painted by the Applicants’ to the Commission to downplay the extent of their control over this important spectrum band. Thus, as part of its public interest review in this proceeding, the Commission should at minimum require that the Applicants’ provide a detailed analysis similar to that completed by CTCNet attached hereto, for all of their combined leased spectrum holdings in the top 100 BTAs, so the Commission, and the public, can better evaluate and understand the extent of the proposed post-combination company’s present and future control over the EBS-BRS spectrum nationwide.

2. CTCNet’s Case Studies Show that the Post-Combination Company would Control Virtually All the EBS-BRS Spectrum Covering the Vast Majority of the Population Located within the BTAs.

While the Applicants’ analysis of the proposed post-combination concentration of BRS-EBS spectrum by the combined companies attempts to show that there is ample available spectrum for entry by competitors in the largest U.S. major markets by diluting the actual control over these markets across an entire BTA, a simple analysis of the population covered by the major market GSAs currently controlled by Sprint and Nextel as compared to the total BTA population, demonstrates that having control of the major market GSAs within the largest BTAs, means control over the spectrum necessary to reach the vast majority of the population.

In this respect, in the 6 Major Market Areas for which CTCNet prepared Case Studies attached hereto, population counts and GSA coverage maps within those BTAs were also analyzed. Based on these studies, CTCNet found that the post-combination

²² *See Application for Transfer of Control, WT Docket 05-63, filed February 8, 2005, Joint Declaration of Todd Rowley and Robert Finch, Attachment E at 6.*

company would control virtually all BRS-EBS spectrum required to reach the vast majority of the population *located inside the entire BTA*. Further, these studies also found that some of the GSAs they control actually cover population in BTAs adjacent to those where the major population center is located. This further underscores why the only reliable way to evaluate the prospective post-combination company's concentration of the BRS-EBS spectrum is to look at control of the GSAs of actual licensed stations, as is done in the analysis provided by CTCNet, for the Major Market Areas primarily located in top 50 U.S. BTAs. The following summarizes the percentage of population within each of the six BTAs studied for which the combined company would control virtually all of the spectrum:

GSA Market	BTA Rank	BTA Population	GSA Population	Percentage of BTA Population Covered by GSAs
Nextel Markets				
Dallas/Fort Worth, TX	6	5,571,828		
Boston, MA	12	4,391,344		
Providence, RI	36	1,582,997		
	Subtotal:	11,546,169		
Sprint Markets				
Chicago, IL	3	9,098,316		
Houston, TX	7	5,045,022		
Denver, CO	20	2,712,488		
	Subtotal:	16,855,826		
	Grand Total:	28,401,995		

For illustrative purposes, CTCNet also prepared coverage maps, attached hereto at Exhibit 4, indicating the footprint of the spectrum that would be controlled by the post-combination company in the GSAs covering the Major Market Areas inside these 6 Case

Study BTAs.²³ Along with the population data comparison, these maps show that the control of spectrum in these markets by the post-combination company would effectively guarantee no other competitor could enter these markets in the foreseeable future, as it is highly unlikely any viable competitor would attempt the launch of a competing wireless broadband service in any rural, secondary or tertiary market outside the major population center inside any one of the top 50 BTAs. This evidence also underscores the reason the Commission should be focused on the amount of control over all EBS-BRS spectrum in major population centers of the top 100 U.S. BTAs, as suggested by CTCNet, to get the real picture of Sprint-Nextel's current lock on the market for wireless broadband spectrum and services.

IV. Contrary to the Applicants' Claims, Wireless Broadband is a Distinct Market Segment over which the Post-Merger Entity would exert an Unhealthy Degree of Market Power.

In the Joint Opposition, the Applicants continue their attempts to distract the Commission from the fact that the 2.5 GHz spectrum band was painstakingly configured in WT Docket 03-66 to facilitate clearly identifiable wireless broadband data services, and that both Sprint and Nextel (and Nextel's predecessors in interest) have been working closely with equipment vendors for almost five years to develop equipment for the launch of wireless broadband data services on the 2.5GHz band. Further, because of the unique nomadic nature of these new wireless broadband services, they constitute a distinct market segment separate and apart from tethered broadband services like DSL and Cable

²³ These maps take into consideration the bisecting GSA splits on the outside areas of the major market GSAs controlled by Nextel and Sprint in order to illustrate the total major market service area that would be controlled by the post combination company for many years. In some cases, GSA splits are not visible where they occur for a controlled channel group that has a GSA either fully or partially overlapping a larger GSA (which is hiding its coverage map).

Modem, as well as other much more limited wireless services presently available over cellular and PCS networks.²⁴ As previously noted, because the merged entity will be able to absolutely exclude the entry of competitors in 24 of the top 50 major US population centers, and will control over 70% of all usable 2.5 GHz spectrum in 31 of those markets, a grant of the Application would preclude the development of national competition within the fledgling wireless broadband service.²⁵

The Applicants would like the Commission to believe that their mega-merger, which sweeps up and combines tremendous amounts of 2.5 GHz spectrum, will affect no distinct marketplace and no distinct services offerings, and that services to be provided using this spectrum band are as yet unsettled and may be changed on a whim. To this end, the Applicants offer up the broad outline for a package of standard broadband data services dressed up as a new and cutting edge concept they call, “Wireless Interactive Multimedia Service” (“WIMS”). As described by the Applicants, WIMS will be “data-centric and focus on stationary and portable consumer electronic and computing-oriented devices” providing “broadband access to high-speed data, video-on-demand and interactive delivery services.”²⁶ All the hyperbole aside, the Applicant’s description of WIMS service sounds exactly like the wireless broadband services being provided today on 2.5GHz spectrum by a limited number of competitors in a limited number of market areas where spectrum is actually available and not controlled by Sprint or Nextel.

²⁴ See Discussion in Petition to Deny at pp. 6-7.

²⁵ See Discussion in Petition do Deny at pp. 14-16.

²⁶ See Application at p 46 & Joint Declaration at ¶ 4. See also Joint Opposition at p. 28.

In the 2002 industry White Paper, spearheaded by Sprint through the Wireless Communications Association International, that initiated the recent rule changes to provide rules for mobility and more flexible licensing rules on the 2.5GHz spectrum, the industry commenters noted “it has been more than four years since the Commission first adopted rules to permit the routine licensing of MDS and ITFS facilities designed to deliver two-way broadband video, voice and data services,”²⁷ the very broadband services now described by the Applicants as the innovative new service concept WIMS.

Contrary to the Applicants’ assertions, mobile and portable wireless broadband data services are what the industry requested for the 2.5 GHz band, and mobile broadband data services are what the FCC facilitated in its most recent rulemaking proceeding concerning that band.²⁸ While the Applicants in this proceeding attempt to steer clear of references to the identifiable wireless broadband data services market for which the 2.5GHz band is now designated, or to mobile broadband as a distinct market segment, the Applicants have been more candid about this reality in recent statements made in other Commission proceedings. Specifically, in January of this year, Nextel stated “The 2.5 GHz spectrum holds the promise of providing consumers integrated access to voice, high speed data, video on demand, and interactive delivery services **in**

²⁷ See *A proposal for Revising the MDS and ITFS Regulatory Regime*, submitted October 7, 2002 by the Wireless Communications Association International, Inc, The National ITFS Association, and the Catholic Television Network at p. 1 (“Industry White Paper”) citing MDS/ITFS Two-Way Report & Order 13 FCC Rcd 19112 (1998).

²⁸ In its Report & Order, the Commission acknowledged the distinct nomadic nature broadband delivered on this spectrum. Thus, the Commission noted that the rule changes it was adopting constituted “significant progress towards the goal of providing all Americans access to ubiquitous wireless broadband connections, regardless of their location.” *Report & Order*, 19 FCC Rcd 14165 at ¶¶ 1-3, citing *FCC strategic plan FY2003 – FY 2008* at 5 (2002).

competition with well established wireline and cable broadband services.”²⁹ While Sprint acknowledges competition with the wireline broadband providers, it is also on record as noting that this mobile and portable wireless broadband data service constitutes a distinct service segment. In referring to the Commission’s figures on the fixed “Broadband Internet Access Market,” Sprint noted that such figures “should not be interpreted to include the mobile wireless Internet access services contemplated under the revised MDS/ITFS rules.”³⁰ Sprint also noted that in rural and underserved areas, “ITFS/MMDS may be the sole provider of broadband services,” and distinctly referenced the “mobile broadband services market”.³¹ Accordingly, it is disingenuous at best for Sprint and Nextel to now argue that their proposed data-centric, so called WIMS service, is not essentially standard wireless broadband services (which ordinarily include data, voice and video components), and is therefore not part of the previously acknowledged distinct mobile and portable wireless broadband data services market segment.³²

²⁹ Comments of Nextel Communications in re FNPRM in WT Docket 03-66, submitted January 10, 2005 at p. ii [emphasis added].

³⁰ Reply Comments of Sprint Corporation in WT Docket 03-66, submitted October 23, 2003, at p. 24.

³¹ Id. at p. 25. Sprint further noted that its efforts to gain a greater share of the “mobile broadband services market” had been suspended in anticipation of the new rules. Id. With the new rules now firmly in place, the proposed merger makes clear that such efforts are no longer on hold.

³² Nextel also recently acknowledged the existence of such a broadband marketplace. Specifically, Nextel asserted earlier this year, that if certain proposed rule changes were to be adopted, “the Commission can provide certainty and stronger investment incentives in the **broadband marketplace** that will help BRS-EBS licensees deliver services to consumers as swiftly as possible.” See Petition for Partial Reconsideration of Nextel Communications in WT Docket 03-66 submitted January 10, 2005 at p. 33.

A. Contrary to the Applicants Assertions, Equipment is Currently Available for the Launch of Clearly Identified Wireless Broadband Services on Interference Free, Pre-Transition Blocks of BRS-EBS Spectrum.

As part of its claim that there is no current market segment for high speed mobile and portable wireless broadband data services, the Applicants' misleadingly assert that the 2.5 GHz spectrum band will not be usable for such services until after a lengthy band plan transition as recently enacted by the Commission at the Applicants' urging. Further, the Applicants argue that no equipment presently exists for the provision of the very wireless broadband services they claim may be provided in the future over these frequencies. These statements are patently false.

Existing interleaved spectrum alignments in the 2.5GHz band allow an operator that controls certain adjacent channel group pairs to utilize an existing contiguous block of this spectrum, or "sweet spot" within the combined channel group, to provide cellularized broadband services today on spectrum that will remain essentially unchanged in the band after the upcoming band plan transition.³³ There are four such sweet spots among the present band plan, located within each the currently interleaved A/B and C/D LBS blocks, and the interleaved E/F and G/H UBS Blocks. For example, within both the pre-and post transition A/B channel blocks that will become an adjacent 33 MHz post-transition block in the LBS segment of the BRS-EBS spectrum band, there is a contiguous block of approximately 32 MHz that may be utilized today by a competitor, pre transition, to bring wireless broadband services to the GSAs served by such channels. Any service provider that has control over both the existing A and B channel groups

³³ While the ownership of portions of the interleaved spectrum channels will shift during the band plan transition, as long as the operator either owns or leases the two adjacent groups, its access to the spectrum, and therefore its system architecture and current operations, will not be disturbed by the band plan transition.

today, pre-transition, may roll out a system on these channels utilizing currently available equipment, without any need to relocate any operations post-transition.³⁴

Additionally, the Applicants and many international operators utilizing the 2.5 GHz frequencies in international markets have been working for the past several years with equipment vendors to develop equipment for the provision of mobile and portable wireless broadband data services on these frequencies. Several such vendors are currently marketing and deploying equipment used on systems in this country and abroad.³⁵ The following chart summarizes the deployments to date on this spectrum in the United States and internationally, by service providers using equipment available from at least three such vendors for the provision of wireless broadband services.

³⁴ This is true of any service provider using time division duplexing “TDD” technology in their system, which requires sufficient contiguous channels to roll out a system – 33MHz being sufficiently accurate to utilize most such technology. On the other hand, if a service provider desires to utilize frequency division duplexing (“FDD”) technology, which requires separation between upstream and downstream channels, there is also more than adequate non-contiguous spectrum within single EBS-BRS channel groups available either pre-transition or post transition, to roll out a system today. As a matter of fact, Nextel is currently developing technology today in conjunction with Flarion, to roll out just such FDD systems. These systems may be developed with a single BRS-EBS channel group in the LBS in conjunction with a single UBS channel group. See http://www.nextel.com/about/corporateinfo/company_history.shtml.

³⁵ Theoretically, a service providers may provide wireless broadband services on as little as 5 MHz of contiguous spectrum in the 2.5 GHz band today using certain equipment. For example, IP Wireless represents that its system on this spectrum may be constructed utilizing as little as 5 MHZ of contiguous spectrum. See http://acity3g.axcera.com/system_benefits.php. While constructing such a system would not likely be cost effective for a service provider, considering the sheer number of base stations that would most likely be required to be deployed in a market if such a minimal amount of spectrum were required to be reused throughout the market area in order to achieve adequate bandwidth throughout the market area, such a system is theoretically presently possible.

Vendor	Location of Deployment	Frequency Range
IP Wireless	Jacksonville, FL USA	2.5-2.6
	Missoula, MT USA	2.5-2.6 GHz
	Germany	2.6 GHz
	Kazakhstan	2.5-2.7 GHz
	Malaysia	2.5 GHz
	Nigeria	2.5-2.7 GHz
	Portugal	2.6 GHz
	South Africa	2.5-2.7 GHz
Navini	Erie, PA USA	2.5-2.6
	Quitman, GA USA	2.5-2.6 GHz
	Malaysia	2.6 GHz
	Mauritius	2.5 GHz
NextNet Wireless	Ohio, USA	2.5-2.6 GHz
	Iowa, USA	2.5-2.6 GHz
	Olympia, WA	2.5-2.6
	Michigan, USA	2.5-2.6 GHz
	Nebraska, USA	2.5-2.6 GHz
	Nunavut, Canada	2.5 GHz
	Mexico	2.5-2.6 GHz

Utilizing the existing sweet spots and any of these equipment manufacturers, the Applicants (or their competitors, with adequate spectrum holdings) are free to cost effectively deploy ubiquitous next generation wireless broadband services today on the BRS-EBS spectrum. There is no need to either have a lock on all of the spectrum in a market or to wait until after a transition to deploy services on this spectrum, as misleadingly claimed by the Applicants.³⁶ It is especially highly misleading for Sprint to claim that no equipment exists today for the provision of such services, when it has

³⁶ See Joint Opposition at p. 21.

clearly provided the Commission with updates of its testing of such equipment. In April of 2003, Sprint informed the Commission:

Sprint has tested and continues to test, next generation systems in several locations, including Houston, TX and Montreal, Canada. Sprint has also participated with Navini Networks, Inc. to obtain special temporary experimental authority to test Navini broadband equipment in Kansas City, MO and Overland Park, KS and has worked with IP Wireless (“IPW”) in IPW’s market test in Jacksonville, FL. And Sprint has conducted user experience trials in Houston with approximately 75 customers using next generation technology. These trials have been highly successful, and Sprint is preparing to bring next generation broadband services to at least one major market and one smaller market before the end of the year.³⁷

For Sprint to now come to the Commission claiming that equipment is not available for this market is simply untrue.

The small number of would be Sprint and Nextel competitors that exist today have in some cases already deployed in smaller markets in the United States, but appear to be frozen out of the major markets because of the control over all available spectrum wielded by the Applicants in those markets. Using current technology, the BRS-EBS spectrum space can today accommodate at least 2-3 competitors in each market with more than enough spectrum to cost-effectively deploy ubiquitous networks, both pre and post-transition, and the Commission must not allow this proposed combination to delay the development of this competitive market place any longer.

B. Contrary to the Claims of the Applicants, Other Potential Spectrum Bands for Wireless Broadband Services are neither practical for use or Available Today to Competitors for the Launch of Competitive Wireless Broadband Services.

In their Joint Opposition, Sprint and Nextel maintain that there exist several alternative spectrum bands designated for advanced wireless services (“AWS”) by the

³⁷ See Comments in Support of Petition for Reconsideration, submitted in WT Docket 03-66 by Sprint Corporation, April 8, 2003, at p. 3.

Commission and the International Telecommunication Union.³⁸ However, realizing any type of services on any of these frequency bands is not possible, and is impractical for the foreseeable future. The following is a summary of the various bands cited by the Applicants over which they claim competitive services may be deployed, and the reasons why such claims are incorrect.

90 MHz at 1710-1755/2110-2155 MHz

While this spectrum was recently reallocated for commercial use,³⁹ the Commission has not yet even scheduled an auction of this spectrum for Advanced Wireless Services. In a press release dated December 29, 2004, the Commission did inform the National Telecommunications Information Administration (“NTIA”) that it intends to auction the licenses for AWS in this band in June 2006, but there is no guarantee such auction will actually take place in that time frame.⁴⁰ Further, once the spectrum is auctioned, federal government and other incumbent users must be relocated off of the band by the winning bidders in any auction, a process that may take several years after the conclusion of the auctions.⁴¹ In addition, no technology is available today for deployment of services over this spectrum, and any potential operator would have to work with the vendors for years to develop equipment that will operate on these frequencies.

³⁸ See Joint Opposition at pp. 22-24.

³⁹ See generally *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Systems*, ET Docket 00-258, Sixth Report and Order, FCC 04-219 (2004) (*Sixth R&O*).

⁴⁰ See *FCC To Commence Spectrum Auction that Will Provide American Consumers New Wireless Broadband Services*, December 29, 2004.

⁴¹ See 47 U.S.C. 923(g)(6)

The fact is, this spectrum will most likely remain completely unavailable for many more years to come, with Sprint-Nextel being an entrenched dominant player in the wireless broadband services market using the BRS-EBS spectrum it controls, before any potential competitor could emerge using this AWS spectrum.

10 MHz at 1915-1920/1995-2000 MHz (H Block)

The H Block was only recently designated for advanced services⁴², with an auction forthcoming at some uncertain date. The Commission has put off developing technical standards for the spectrum based on concerns about interference in the PCS spectrum, and plans to address this issue as part of the AWS 2 GHz Service Rules Notice of Proposed Rulemaking.⁴³ This spectrum is also subject to band clearing of incumbent users, and there is no existing technology to deploy services on this spectrum. Again, it is impossible to use this spectrum for broadband wireless services for the foreseeable future.

10 MHz at 2020-2025/2175-2180 MHz (J Block)

This band serves Fixed and Mobile services to promote the introduction of Advanced Services.⁴⁴ The Commission has not yet decided whether this spectrum will ever be auctioned. This spectrum would also be subject to band clearing of incumbent

⁴² See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Systems, ET Docket 00-258, Sixth Report and Order, FCC 04-219 (2004) (*Sixth R&O*) at para. 68.

⁴³ Sixth R&O para. 27.

⁴⁴ Sixth R&O para. 43.

users if actually auctioned, and there is no existing technology to deploy services on this spectrum.⁴⁵

20 MHz of currently unpaired spectrum at 2155-2175 MHz

This spectrum is used for terrestrial fixed services (“FS”). For the foreseeable future, the Commission requires new licensees to protect incumbent FS users.⁴⁶ This spectrum is also not available for use by any competitor in the wireless broadband services market into the foreseeable future.

Spectrum Recovered from the DTV Transition

Sprint and Nextel also claim that more than enough spectrum is available for competitive deployment of AWS services in the former analog spectrum reallocated in the DTV Transition.⁴⁷ However, aside from the issue that absolutely no technology currently exists for the provision of wireless broadband services using this spectrum, to assume the spectrum would be available and ready for AWS in 2007, is ridiculous. The broadcasting community has been reluctant to vacate this spectrum for years, and there is no guarantee the broadcasters will fully transition and vacate this spectrum at any time in the foreseeable future. Further, there is no incentive for broadcasters to move, whose operations will also be required to be relocated by any winning bidder in an auction that has not even been scheduled. Thus, like the other bands cited by the Applicants, this spectrum clearly will not be available to any competitor for the deployment of any

⁴⁵ Sixth R&O para. 55.

⁴⁶ Sixth R&O para 102.

⁴⁷ See *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd 22953, 1998.

wireless broadband services competitive with the post-combination Nextel-Sprint for many years to come.

Wireless Communications Services

Wireless Communications Services (“WCS”) was auctioned in 1997, with deployment required by 2007. The Commission intended for the band to “provide fixed, mobile, radiolocation or satellite communications services to individuals and businesses.”⁴⁸ While Sprint and Nextel claim WCS spectrum is available and occupied by competitors (Verizon and Cingular), WCS services have not ever been deployed in any meaningful fashion. In fact, there is only one deployment on record, that of MegaBroadband of Massachusetts, which was very recently announced in March 2005.⁴⁹ Since only one small deployment has occurred in 8 years, this signals there are serious impediments to any nationwide or regional deployment of this spectrum. Certainly, there exist technical impediments surrounding the narrowband nature of this spectrum, based on the non-contiguous narrow paired bandwidths on which to deploy any systems. This certainly creates a financial disincentive for any would be operator to roll out cost effective services on this spectrum, considering the likely required investment in an adequate number of base stations to cover any single market.

In sum, it is incredulous to claim these “alternative” spectrum bands will provide for adequate competition in the advanced wireless broadband data services marketplace. At each frequency, different propagation characteristics are present, requiring multiple equipment configurations. In today’s telecommunications landscape, there are no

⁴⁸ See *What is Wireless Communications Service*, www.wireless.fcc.gov/wcs/, viewed April 13, 2005.

⁴⁹ See *Navini Unwires MegaBroadband, March 24, 2005*, www.unstrung.com, viewed April 13, 2005.

equipment vendors offering wireless broadband solutions for these bandwidths. Sprint and Nextel incorrectly assert these bands as alternatives TODAY. The Commission must examine this merger in the context of what is available for deployment today, and judge accordingly.

C. The International Community has designated the 2.5 GHz band for Wireless Broadband Data Services.

The International Telecommunication Union (“ITU”) designated three common bands worldwide to roll out - advanced wireless services at the historic IMT-2000 conference, including the 2.5 GHz band.⁵⁰ The resultant allocation table the FCC provided in its First Report and Order on reallocation of 3G spectrum is reproduced as Exhibit 5.⁵¹ Thus, the BRS-EBS 2.5 GHz Band is important for the deployment of competitive wireless broadband services both within the United States and around the World.

Competition for wireless broadband services in other nations around the World has already begun to heat up – even more so than in the United States.⁵² Without a competitive U.S. market in this spectrum band, a single entrenched monopoly holding the vast majority of this spectrum in the United States can use its market power to establish monopoly terms for access by any International companies for roaming and other availability for foreign customers to access services while traveling inside the U.S. market. In turn, the potential for access by U.S. subscribers to wireless broadband services networks outside the U.S. may not be available where a single company in the

⁵⁰ See www.itu.int/newsarchive/wrc2000/releases/outcome.html, viewed April 14, 2005.

⁵¹ See *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket 00-258, FCC 01-256, at Appendix, First Report and Order (2001).

U.S. can stifle global competition and reciprocal access. The BRS-EBS band in the U.S. and the 2.5GHz band globally has been earmarked as the first true “International” spectrum band. Lack of national U.S. competition may kill the dream of this band ever reaching its global potential. A combined Nextel-Sprint as proposed would be in a position to ensure that market forces would not work to open up this band globally as these companies could sit out of the international market as long as it takes to force global competitors to agree to their terms of U.S. access.

V. Given the Importance of This Spectrum, the Sheer Size of the Proposed Merger, and the Concentration of Post Merger Holdings, A Hands Off Policy Would Not be Appropriate in this Instance.

Contrary to the Applicants’ assertions, the proposed merger is unlike situations previously confronted by the Commission in the Cingular-AT&T Wireless Order and the AT&T Media One Merger Order.⁵³ Here, the Commission is confronted with a situation where one entity would essentially monopolize an entire spectrum band segment, and would be able to foreclose the entry of competitors to entire markets, as well as the development of national wireless broadband competition, in contravention of the Commission’s recently stated express goal of promoting such competition in the 2.5 GHz band. As discussed above and contrary to the situation encountered in the Cingular-AT&T case, here the parties will not simply control five or six markets in the 2.5 GHz band as does BellSouth, but rather, a vast majority of the available 2.5GHz spectrum in the major Market Areas located within the top fifty US BTAs. Additionally, unlike the

⁵² See Section IV at page 28-29.

⁵³ See Joint Opposition at p. 22 citing Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp for consent to Transfer of Control of License and Authorizations, Memorandum Opinion and Order, 19 FCC Rcd 21522 at ¶ 78 (2004); and Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Media One Group, Inc. to AT&T, Memorandum Opinion and Order, 15 FCC Rcd 9816 at ¶ 123 (2000).

situation encountered in the AT&T-Media One case, the Commission is not confronted with a facilities aggregation in the heavily competitive wireline broadband market, but a radical combination of the two major stakeholders in the fledgling and distinct wireless broadband services market. Because as CTCNet has previously noted, this licensed dedicated spectrum is authorized by the ITU for broadband on an international basis, new rules have specifically been designed regarding this band for wireless broadband services, is nomadic and un-tethered, and is capable of speeds rivaling wireline services unlike any other current wireless service, the transaction should not be handled in the hands off manner advocated by the Applicants. Here, despite the fledgling nature of the wireless broadband services industry, the sheer magnitude and concentration of the combination of these holdings on such uniquely configured spectrum, would foreclose competition at the starting gate.⁵⁴ Because as discussed above, there will be no immediately available competitive spectrum, a hands off approach would provide the merged entity with a virtual service monopoly in this service segment for many years to come. The Commission should therefore condition the grant of the merger on divestiture of sufficient spectrum in the 2.5 GHz Band in order to ensure the continued development of a healthy and competitive wireless broadband marketplace.

⁵⁴ The Commission has, in the past, elected to review the effects of significant combinations even on “nascent” markets. See *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 2.4 Authorizations by Time Warner, Inc. and America Online, Inc. to AOL Time Warner Inc.*, CS Docket No. 00-30 Memorandum Opinion and Order, 16 FCC Rcd. 6547 (2001) (Examining the effect of combination on the nascent instant messaging market).

