

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

|  |   |                          |
|--|---|--------------------------|
| In the Matter of                               | ) |                          |
|  | ) |                          |
| Digital and Wireless Television, LLC, Assignor | ) | File Numbers: 0002098626 |
|  | ) | 0002069066               |
| American Telecasting of Denver, Inc., Assignee | ) |                          |
|  | ) | WT Docket 05-63          |
| Assignment of License for Partitioned          | ) |                          |
| Broadband Radio Service BTA B110               | ) |                          |
|  | ) |                          |
| Broadband Radio Service Stations KNSC838,      | ) |                          |
| KNSC839, KNSC840, KNSE325, KNSE326 &           | ) |                          |
| KNSC327 at Ponderosa Park , CO                 | ) |                          |
|  | ) |                          |
| and  | ) |                          |
|  | ) |                          |
| Broadband Radio Service Station KNSE324        | ) |                          |
| at Denver, Colorado                            | ) |                          |

To: The Commission

**CONSOLIDATED PETITION TO DENY OF  
COMMUNITY TECHNOLOGY CENTERS' NETWORK**

Community Technology Centers' Network ("CTCNet"), hereby submits its Consolidated Petition to Deny the above-referenced assignments of license for a partitioned Broadband Radio Service ("BRS") BTA B110 and for BRS Stations KNSC838 (BRS1-Channel), KNSC839 (BRS2A-Channel), KNSC840 (F-Group), KNSE325 (H1 Channel), KNSE326 (H2 Channel), and KNSE327 (H3 Channel) at Ponderosa Park, Colorado, as well as BRS Station KNSE324 (F-Group) at Denver Colorado, from Digital and Wireless Television, LLC, ("DWT") to American Telecasting of Denver, Inc, a wholly owned subsidiary of Sprint Corporation ("Sprint").<sup>1</sup>

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<sup>1</sup> These assignment applications appeared on public Notice No. 2111 on March 30, 2005, and therefore pursuant to 47 CFR §§ 1.939 and 1.4 this petition is timely filed.

CTCNet recently filed a petition to deny a transfer of control application from Nextel Communications, Inc. to Sprint in WT Docket No. 05-63 (“Transfer Petition”). As part of that Transfer Petition, CTCNet raised concerns regarding the resultant unhealthy level of market power that would result from the combination of the two companies’ spectrum portfolios and lease holdings in the 2.5 GHz Band. CTCNet demonstrated that the combined Sprint/Nextel entity would own or control all available commercial spectrum in 30 of the top 50 US markets and would control substantially all commercially usable spectrum in the band within 24 of those markets, including Denver. CTCNet showed that such concentrated holdings would allow the combined entity to exclude competitors from these markets, which would effectively bar the development of any competitive national services in the fledgling wireless broadband market. Because of the antitrust and public interest concerns regarding the combined entity’s extremely concentrated spectrum holdings and the inevitability of anti-competitive behavior by such a combined entity, CTCNet requested that any grant of that transfer application be conditioned on divestiture of sufficient spectrum or leases so as to ensure competition in the 2.5 GHz band. As part of the larger analysis in the Transfer Petition, CTCNet believes that a grant of the above-referenced assignment applications would further exacerbate the concentration of 2.5 GHz spectrum in the Denver market and its BTA, the 20th largest BTA market in the United States. The disposition of the above-referenced applications is therefore relevant to the concentration and divestiture issues raised in WT Docket 05-63.<sup>2</sup> Accordingly, CTCNet respectfully requests

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<sup>2</sup> While KNSC838 is presently licensed on frequencies at 2150 to 2156 GHz, it will be relocated to the 2.5 GHz band in conjunction with a displacement of BRS Channels 1 and 2 pursuant to Commission decisions in WT Docket 03-66 and 00-258. *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 ¶23 and n. 54 citing Amendment of Part

that for the reasons set forth herein, and in its Transfer Petition and related pleadings, that the above-referenced applications be denied, be processed in conjunction with WT Docket 05-63, or that processing of such applications be held in abeyance pending the outcome of WT Docket 05-63, and that such applications thereafter should be considered subject to any divestiture restrictions that may be placed on Sprint as a result of that proceeding.

CTCNet and its members have standing to petition this assignment for the same reasons set forth in CTCNet's Petition and related pleadings in WT Docket 05-63, which are incorporated herein by reference. CTCNet has members within the Denver BTA and the service areas of the above-referenced stations, that would be adversely affected by the grant of the above-referenced applications and the further consolidation of spectrum on the 2.5 GHz band in the hands of a single entity.<sup>3</sup>

CTCNet acknowledges that pursuant to an existing lease agreement, Sprint already controls the stations and the BTA for which it now seeks authority to receive assignments of license from DWT. However, CTCNet nonetheless maintains that a grant of these applications would further concentrate spectrum within the 2.5 GHz band in the hands of Sprint, such that Sprint would be the licensee of ALL BRS spectrum in Denver, and therefore should be considered only in conjunction with, or subject to any divestiture requirements arising from, WT Docket 05-63. In that proceeding, Sprint and Nextel downplayed their market power and their concentrated control of spectrum within the 2.5 GHz band, based in part on an assertion that such

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2 of the Commissions Rules to Allocate Spectrum Below 3 GHz for Mobile & Fixed Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, Second Report and Order, 17 FCC Rcd. 23193 (2002).

<sup>3</sup> See CTCNet Petition in WT Docket 05-63 at Exhibit I. In the event that the Commission were to find that CTCNet lacks standing to file a petition in this proceeding, CTCNet respectfully requests that this pleading be treated as an informal objection.

leased spectrum holdings would become available to competitors at the expiration of such leases. However, as assignments like these demonstrate, Sprint continues to solidify its hold on spectrum within the top 50 Markets by gradually converting leaseholds into direct ownership rights. While it might be possible that eventually stations like KNSE324 could become available to competitors at the termination of a lease, such spectrum will never become available to competitors once assigned directly to Sprint. The Commission should not be fooled by seemingly benign and routine applications for assignment of BRS stations to subsidiaries of Sprint or Nextel. All such assignments will only add to the stranglehold that the combined entity will have on spectrum in the 2.5 GHz band and to the resulting unhealthy level of market power that it would hold in the wireless broadband services market.

CTCNet has provided the Commission with a detailed and accurate analysis of the control of 2.5GHz spectrum holdings of Sprint and Nextel in the major market areas of the top 50 U.S. BTAs, including a case study of Denver as part of WT Docket 05-63.<sup>4</sup> The Commission should therefore refrain from substantially altering that picture within such major markets outside of WT Docket 05-63, pending a decision on requested divestiture conditions in that proceeding. CTCNet believes that the issue of consolidation in the 2.5 GHz band, having been raised in the larger merger proceeding, should be decided upon globally in that proceeding, rather than piecemeal in various smaller assignment proceedings. Such handling of these applications would serve the public interest, convenience and necessity by ensuring that the Commission has the opportunity to evaluate an accurate picture of the Sprint and Nextel holdings in this band without further confusing the picture, and would avoid any unnecessary waste of the

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<sup>4</sup> As part of its Reply in WT Docket 05-63, CTCNet provided a market case study specifically addressing Sprint's holdings in the Denver Market. See Reply at p.22 and at exhibits 3D and 4F.

Commission's valuable processing resources, should such acquired Denver spectrum (or any other Denver spectrum) immediately become subject to divestiture pursuant to a ruling in WT Docket 05-63.

Thus, CTCNet respectfully requests that for the reasons set forth herein, and in its Transfer Petition and related pleadings, that the above-referenced applications be denied, be processed in conjunction with WT Docket 05-63, or that processing of such applications be held in abeyance pending the outcome of WT Docket 05-63, and that such applications thereafter should be considered subject to any divestiture restrictions that may be placed on Sprint as a result of that proceeding.

Respectfully submitted,

COMMUNITY TECHNOLOGY  
CENTERS' NETWORK

By: /s/ John Zoltner  
John Zoltner  
Director of Strategy & Development

By: /s/ Ryan Turner  
Ryan Turner  
Director of Policy & Communications

April 28, 2005

## CERTIFICATE OF SERVICE

I, Ryan Turner, hereby certify that copies of the foregoing Consolidated Petition to Deny of Community Technology Centers' Network were served this 28th day of April, 2005 via first class mail of the United States Postal Service, unless otherwise noted, on the following parties:

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