

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Champion Industries, Inc., Assignor	)	File Number: 9650667
	)	
Nextel Spectrum Acquisition Corp., Assignee	)	WT Docket 05-63
	)	
Assignment of License Broadband Radio Service	)	
Station WLK212 at Providence, RI	)	

To: The Commission

**PETITION FOR RECONSIDERATION OF  
COMMUNITY TECHNOLOGY CENTERS' NETWORK**

Community Technology Centers' Network ("CTCNet"), hereby submits its Petition for Reconsideration regarding the Commission's consent of March 29, 2005 as memorialized on Public Notice 2118 released April 6, 2005 to the above-referenced assignment of license for a Broadband Radio Service ("BRS") station license for WLK212, the F-Group Channels at Providence, Rhode Island, from Champion Industries, Inc. ("Champion") to Nextel Spectrum Acquisition Corp, a wholly owned subsidiary of Nextel Communications ("Nextel").<sup>1</sup>

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

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<sup>1</sup> Because the staff action consenting to this Assignment appeared on Public Notice on April 6, 2005, this Petition for Reconsideration is timely filed pursuant to 47 CFR §§ 1.106 and 1.4.

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 Providence. 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 application would further exacerbate the concentration of 2.5 GHz spectrum in the Providence market and its BTA, the 36th 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. Accordingly, CTCNet respectfully requests that for the reasons set forth herein, and in its Transfer Petition and related pleadings, that the Commission reconsider its consent to above-referenced application and return the assignment application to pending status to be processed in conjunction with WT Docket 05-63, or that processing of such application be held in abeyance pending the outcome of WT Docket 05-63, and that such application thereafter should be considered subject to any divestiture restrictions that may be placed on Nextel and 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.<sup>2</sup> CTCNet has members within the Providence BTA and the service area of the above-referenced station, that would be adversely affected by the assignment of this station and the further consolidation of spectrum on the 2.5 GHz band in the hands of a single entity.<sup>3</sup>

In the WorldCom Bankruptcy proceeding, pursuant to which Nextel took assignment of WorldCom's licensed 2.5 GHz spectrum in the Providence BTA as well as WorldCom's spectrum leases for both BRS and EBS channels in that market, WorldCom and Nextel reported that the lease under which Nextel now controls the Champion F-Group station in Providence was scheduled to expire on January 20, 2005.<sup>4</sup> Absent Nextel's attempt to further aggregate spectrum through the use of a purchase option contained within that lease, such spectrum might already be available for lease by a competing wireless broadband services provider.<sup>5</sup> CTCNet maintains that, despite Nextel's prior and continuing control of

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<sup>2</sup> CTCNet did not file a petition to deny earlier in this proceeding regarding the instant assignment because at the time such assignment appeared on Public Notice, Nextel was not yet the proposed Assignee, and the Transfer Application that is the subject of WT Docket 05-63 had not yet been filed. Nextel was only inserted as a replacement for the originally proposed assignee by a letter submission dated October 4, 2004, and the assignment took on increased significance on February 8, 2005 when Sprint and Nextel submitted their transfer application proposing to merge their 2.5GHz portfolios. Accordingly, CTCNet is appearing in this proceeding at its first opportunity following the occurrence of those two seminal events.

<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.

<sup>4</sup> See Asset Purchase Agreement by and among WorldCom, Inc., certain Subsidiaries of WorldCom, Inc., Nextel Spectrum Acquisition Corp. and Unrestricted Subsidiary Funding Company, dated July 8, 2003 at Schedule 2.02(vi).

<sup>5</sup> Because the Champion lease was not available to CTCNet for its market study submitted in its April 18, 2005 Reply in WT Docket 05-63, CTCNet can only guess that such spectrum would be available at the termination of

WLK212, this assignment of license to Nextel would further concentrate spectrum within the 2.5 GHz band in the hands of Nextel and ultimately a combined Sprint/Nextel, such that the combined entity would become the licensee of all but one of the thirteen commercially licensable BRS spectrum channels in the Providence BTA, and therefore should be considered only in conjunction with, or subject to any divestiture requirements arising from, WT Docket 05-63.

In WT Docket 05-63, 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 leased spectrum holdings would become available to competitors at the expiration of such leases. However, as assignments like these demonstrate, Nextel and Sprint continue to attempt to solidify their 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 WLK212 could become available to competitors at the termination of a lease, such spectrum will never become available to competitors once assigned directly to Nextel. 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.<sup>6</sup>

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the lease. As discussed by CTCNet in that pleading, the leases of such operators frequently include exclusive negotiation provisions or right of first refusal that attach at the conclusion of such leases making such stations essentially unavailable to competitors despite the termination of the lease.

<sup>6</sup> The Commission has already indicated that competition rather than monopoly control of the 2.5GHz band was one of the policy goals underlying its recent rule changes governing that spectrum band. *See Amendment of*

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 Providence as part of WT Docket 05-63.<sup>7</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 Commission's valuable processing resources, should such acquired Providence spectrum (or any other Providence 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 Commission reconsider the Staff consent to the above-referenced assignment application and return such application to pending status, and that the application be processed in conjunction with WT Docket 05-63, or alternatively

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*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 ¶ 5.*

<sup>7</sup> As part of its Reply in WT Docket 05-63, CTCNet provided a market case study specifically addressing Nextel's holdings in the Providence Market. See Reply at p.22 and at exhibits 3F and 4B&C.

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 Nextel and Sprint as a result of that proceeding.

Respectfully submitted,

COMMUNITY TECHNOLOGY  
CENTERS' NETWORK

By:     /s/ John Zoltner      
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By:     /s/ Ryan Turner      
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May 6, 2005

## CERTIFICATE OF SERVICE

I, Ryan Turner, hereby certify that copies of the foregoing Petition for Reconsideration of Community Technology Centers' Network were served this 6th day of May, 2005 via first class mail of the United States Postal Service, unless otherwise noted, on the following parties:

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