

May 17, 2005

**BY ELECTRONIC FILING**

Catherine W. Seidel  
Acting Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Applications for Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. and Its Subsidiaries to Sprint Corporation, WT Dkt. No. 05-63

Dear Ms. Seidel:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Sprint Corporation ("Sprint") and Nextel Communications, Inc. ("Nextel"), applicants in the above-referenced proceeding (the "Applicants"), submit this letter to address the need for enhanced confidential treatment for certain materials called for by the Commission's request for information dated April 29, 2005 (the "Information Request"), such that only outside counsel and their consultants/employees may have access to such materials. The Applicants seek enhanced protection for certain materials related to their business and marketing plans (e.g., forward-looking plans, strategy documents, details of the steps Applicants anticipate taking to achieve merger synergies, disaggregated estimates of savings and benefits associated with those synergies, competitive analyses that may reveal competitors' specific strengths, weaknesses, and strategies), granular cost and revenue data (e.g., calculations of incremental, marginal, variable/fixed costs or revenues, customer identification), and detailed maps and network facilities inventories. These materials constitute some of the most sensitive data requested by the Commission, and contain the types of information that has been afforded heightened protection in prior proceedings.<sup>1</sup> For the reasons set forth below, inadvertent or intentional

---

<sup>1</sup> See, e.g., *EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. - Order Adopting Second Protective Order*, 17 FCC Rcd. 7415 (2002) ("*EchoStar/Hughes Second Protective Order*"); *News Corporation, General Motors Corporation, and Hughes Electronics Corporation - Order Concerning Second Protective Order*, 18 FCC Rcd 15198, 15199 (2003) ("*News Corp./Hughes Second Protective Order*"); *AT&T Corp. Applications for Approval of Transfer Of Control, Order Adopting Second Protective Order*, DA 05-1322, WC Docket No. 05-65 (rel. May 9, 2005) ("*SBC/AT&T Second Protective Order*").

disclosure of these materials to the Applicants' competitors - some of whom are parties in this proceeding<sup>2</sup> - would have a devastating effect on Applicants' businesses and place them at a significant competitive disadvantage. Accordingly, Applicants request that the Commission create an enhanced level of confidentiality as it did in the *EchoStar/Hughes Second Protective Order*, the *News Corp./Hughes Second Protective Order*, and the *SBC/AT&T Second Protective Order*.<sup>3</sup>

The Applicants seek enhanced protection for their competitive analyses and business and marketing plans. Such planning documents and information are obviously among Applicants' most competitively sensitive information. It is critically important that such information be effectively shielded from disclosure to competitors that would be able to react to this information in their own competitive analyses, business and marketing strategies. The Commission previously found similar confidential information worthy of enhanced protection in the *EchoStar/Hughes Second Protective Order*, the *News Corp./Hughes Second Protective Order*, and the *SBC/AT&T Second Protective Order*.<sup>4</sup>

Accordingly, Applicants request enhanced protection for competitive analyses or studies that discuss their efforts to gather information on competitors; market studies or competitive analyses that may reveal strengths, weaknesses, or strategies of Applicants or other competitors; detailed, granular, or proprietary engineering information (including analysis of technical performance); plans to construct new facilities, offer new services, or introduce new equipment, and plans for, or the results of, tests for such facilities, services, or equipment; and information and documents that could reveal procurement strategies, pricing strategies, competitive strategies, product strategies, merger integration strategies, and marketing strategies. See Sprint Information Request ¶¶ 2, 6, 7, 8(c), 9, 11, 16(b), 18(b), 18(d), 19, 21, 23, 28; Nextel Information Request ¶¶ 2, 5, 6, 7(c), 8, 10, 15(b), 17(b), 17(d) 18, 21, 26.

Applicants also seek enhanced protection for confidential and commercially sensitive information regarding the specific steps that the Applicants anticipate taking to achieve benefits or efficiencies from the integration of their networks and operations, the risks Applicants perceive in achieving the benefits or efficiencies, the conditions necessary for achieving the benefits or efficiencies, the time and costs required to achieve the benefits or efficiencies, and disaggregated quantifications of these benefits or efficiencies, as well as supporting documents and data. See Sprint Information Request ¶¶ 12, 18(c), 24; Nextel Information Request ¶¶ 11, 17(c), 22. The fact that the

---

<sup>2</sup> For example, parties to this proceeding include SouthernLINC Wireless, Coastal SMR Network, LLC; A.R.C., Inc. d/b/a Antenna Rentals Corp; Skitronics, LLC; Waccamaw Wireless, LLC; CRSC Holdings, Inc.; Preferred Communications Systems, Inc.; United States Cellular Corporation; NY3G Partnership; and Richard W. Duncan d/b/a Anderson Communications.

<sup>3</sup> See *EchoStar/Hughes Second Protective Order*, 17 FCC Rcd. at 7416; *News Corp./Hughes Second Protective Order*, 18 FCC Rcd at 15,198; *SBC/AT&T Second Protective Order*, DA 05-1322, WC Docket No. 05-65 (rel. May 9, 2005).

<sup>4</sup> See *EchoStar/Hughes Second Protective Order*, 17 FCC Rcd. at 7416; *News Corp./Hughes Second Protective Order*, 18 FCC Rcd at 15,198; *SBC/AT&T Second Protective Order*, DA 05-1322, WC Docket No. 05-65 (rel. May 9, 2005).

May 17, 2005

Page 3

Applicants are even between themselves limiting the exchange of such information to their counsel and experts, notwithstanding their agreement to merge, confirms the importance of according them the special protections that the Commission has previously employed to prevent the intentional or inadvertent disclosure of highly sensitive commercial information.

The Applicants also seek enhanced protection for per unit, marginal, or incremental revenue information, as well as disaggregated or detailed information concerning each company's cost of providing service, including input costs, terms and conditions. This includes: revenues and numbers of customers by customer type and the identities and characteristics of specific companies that are customers of Applicants or with whom Applicants have (or are negotiating) commercial arrangements. *See* Sprint Information Request ¶¶ 5, 6(b), 6(e), 8, 10, 12, 13, 25(b); Nextel Information Request ¶¶ 5(b), 5(e), 7, 9, 11, 12, 23(b). Access by competitors to per unit, disaggregated or detailed revenue and cost information would allow such competitors to exploit any perceived weakness at the same time or even before the Applicants were able to react and address those issues. Access to such information by competitors could also lead to tacit collusive behavior, which would be contrary to the FCC's public interest mandate and a peculiarly perverse result of the Commission's review of the proposed merger.

Finally, Applicants seek enhanced protection for non-public coverage maps or network diagrams. *See* Sprint Information Request ¶¶ 16(c), 18(d); Nextel Information Request ¶¶ 15(c), 17(d). These materials are deserving of enhanced protection not only because they are commercially sensitive, but because their disclosure could raise national security concerns.

If you have any questions concerning the foregoing, please do not hesitate to contact the undersigned.



Regina M. Keeney  
**LAWLER, METZGER, MILKMAN & KEENEY, LLC**  
2001 K Street, N.W., Suite 802  
Washington, DC 20006  
202-777-7700

*Counsel for Nextel Communications, Inc.*

Sincerely,



Michael G. Jones  
**WILLKIE FARR & GALLAGHER, LLP**  
1875 K Street, N.W.  
Washington, D.C. 20006  
202-303-1000

*Counsel for Sprint Corporation*

cc: James R. Bird  
Paul D'Ari  
Scott Delacourt  
Sara Mechanic  
Paul Murray  
Louis Peraertz  
Joel Rabinovitz  
Walt Strack