

**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 No. 05-63
	)	
Assignment of License Broadband Radio	)	
Service Station WLK212 at Providence, RI	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Nextel Communications, Inc. (“Nextel”) hereby opposes the Petition for Reconsideration (the “Petition”) filed by Community Technology Centers’ Network (“CTCNet”) regarding the Commission’s grant of the above-captioned Broadband Radio Service (“BRS”) assignment application. The Commission should expeditiously deny the Petition, based on CTCNet’s lack of standing and its failure to raise any issue other than Nextel’s pending merger application, a subject matter that is irrelevant to the instant proceeding.

**I. CTCNET LACKS STANDING TO CHALLENGE THE FCC’S ASSIGNMENT GRANT**

On March 29, 2005, the Commission consented to the assignment of the BRS station license for WLK212, the F-Group Channels at Providence, Rhode Island, from Champion Industries, Inc. (“Champion”) to Nextel Spectrum Acquisition Corp. (“Nextel

Spectrum”), a wholly owned subsidiary of Nextel.<sup>1</sup> On May 6, 2005, CTCNet filed its Petition challenging this assignment.<sup>2</sup> In its Petition, CTCNet fails to satisfy the basic standing requirement contained in Section 1.106 of the Commission’s rules. Under this provision, a petitioner for reconsideration who was not previously a party to the proceeding must “state with particularity the manner in which the person’s interests are adversely affected by the action taken[.]”<sup>3</sup>

In evaluating whether a petitioner has met this standing requirement, the Commission frequently relies upon a three-pronged test which requires a party to demonstrate (i) a distinct and palpable personal injury-in-fact that is (ii) traceable to the respondent’s conduct and (iii) redressable by the relief requested.<sup>4</sup> Rather than attempt to satisfy this threshold requirement, CTCNet merely asserts that it has standing “for the same reasons set forth in CTCNet’s Petition and related pleadings in WT Docket 05-63,” the Commission’s current proceeding on the proposed merger of Nextel and the Sprint Corporation (“Sprint”).<sup>5</sup> Instead of describing those “reasons,” CTCNet only cites to its membership list and states that it has members within the Providence BTA and the service area of WLK212 “that would be adversely affected by the assignment” of

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<sup>1</sup> See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, et al.*, Public Notice, Report Number 2118, 2005 FCC LEXIS 2142 (April 6, 2005).

<sup>2</sup> Since the Petition was served on Nextel by mail, the FCC’s rules afford Nextel a total of 13 days to file an opposition. See Petition, Certificate of Service; 47 C.F.R. §§ 1.106(g), 1.4.

<sup>3</sup> 47 C.F.R. § 1.106(b)(1).

<sup>4</sup> See, e.g., *Petition for Reconsideration and Motion for Stay of Paging Systems, Inc.*, Order, DA 05-1099, 2005 FCC LEXIS 2343, n.36 (WTB 2005).

<sup>5</sup> Petition at 3.

WLK212.<sup>6</sup> This conclusory assertion does not satisfy the plain language “particularity” requirement of section 1.106(b)(1), much less the three-pronged standing test typically applied by the Commission.

Furthermore, CTCNet’s Petition to Deny and its other filings on the proposed Sprint-Nextel merger fail to show any basis for CTCNet’s standing to challenge the instant assignment grant. The two boilerplate declarations used by CTCNet to support its claim of standing to oppose the Sprint Nextel merger were provided by CTCNet members in San Diego, California and Oklahoma City, Oklahoma – not Providence.<sup>7</sup> The discussion in those declarations is limited to the effect of the merger in the declarants’ local areas (*i.e.*, in San Diego and Oklahoma City), and neither addresses the Providence market or the assignment of WLK212 or otherwise establishes that CTCNet will be “adversely affected” by that assignment. Moreover, the statements contained in one of these declarations, purportedly made on behalf of the YMCA of San Diego County, were later revealed to be unauthorized.<sup>8</sup> In a letter attached to the Via/Net Opposition, a representative of the YMCA of San Diego Country stated that the “signed declaration does not represent the views or opinions of the YMCA of San Diego County

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<sup>6</sup> Petition at 3 & n.3. CTCNet’s membership list indicates that it has three members in Rhode Island, only one of which is located in Providence. *See* Petition to Deny of Community Technology Centers’ Network, WT Docket 05-63, Exhibit 1 (Mar. 30, 2005) (“CTCNet Merger Petition”).

<sup>7</sup> *See* CTCNet Merger Petition, Exhibits 2 & 3. As demonstrated by Sprint and Nextel in their response to the CTCNet Merger Petition, those two declarations do not allege the type of direct consequences needed to confer standing to challenge the proposed merger. Joint Opposition of Sprint Corporation and Nextel Communications to Petitions to Deny and Reply to Comments, WT Docket No. 05-63, at 6 n.14 (Apr. 11, 2005) (citation omitted).

<sup>8</sup> *See* Opposition to Petitions to Deny by Via/Net Companies, WT Docket No. 05-63, at 4 (Apr. 11, 2005) (“Via/Net Opposition”).

nor does [the person who signed the declaration] have any authority to make statements or declarations on behalf of the YMCA of San Diego County.”<sup>9</sup> Accordingly, the Commission should find that CTCNet has failed to establish that it has standing to petition the FCC to reconsider its consent to the assignment of WLK212.

Perhaps in view of this obvious failure, CTCNet asks the Commission to treat its filing as an “informal objection” if the Commission should find that CTCNet lacks standing.<sup>10</sup> Even if the Commission grants this request, however, it is under no obligation to consider the merits of CTCNet’s filing.<sup>11</sup>

## **II. CTCNET’S OBJECTIONS TO THE PROPOSED MERGER ARE IRRELEVANT TO COMMISSION’S CONSIDERATION OF THE INSTANT ASSIGNMENT APPLICATION**

CTCNet similarly fails to identify any legitimate basis for reversing the Commission’s assignment grant. CTCNet’s sole argument is that the assignment of WLK212 to any affiliate of Nextel would confer too much “market power” on a “combined” Sprint Nextel entity.<sup>12</sup> This claim, however, is entirely irrelevant to the

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<sup>9</sup> See Letter from John Merritt to Sharon E. Hilliard, attached to Via/Net Opposition.

<sup>10</sup> Petition at 3 n.3.

<sup>11</sup> See *Licenses of National Science and Technology Network, Inc.*, Order on Further Reconsideration, 17 FCC Rcd 11133, ¶ 4 (WTB 2002) (noting that “the Commission is not obligated to consider the merits of an informal objection”); *Automobile Club of Southern California*, Order on Reconsideration, 16 FCC Rcd 2934, ¶ 6 (WTB 2001) (“we may consider informal pleadings, though we are not required to consider them.”) (citation omitted). If the Commission does elect to consider the merits, it is under no obligation to draft a detailed analysis of CTCNet’s informal arguments, but only must give a clear indication that CTCNet’s informal objection was considered. See *Applications of Hispanic Broadcast System*, Memorandum Opinion and Order, 16 FCC Rcd 8072, ¶ 4 (2001); see also *Applications of Wendell & Assocs.*, Memorandum Opinion and Order, 14 FCC Rcd 1671, 1679 (1998).

<sup>12</sup> See Petition at 4.

Commission's consideration of the instant assignment application. The assignee of WLK212 is Nextel Spectrum; at this time, prior to any decision on the proposed merger, there is no such "Sprint Nextel" entity. In reviewing applications for assignment or transfer of control, the Commission is required to determine whether the specific assignee – in this case, Nextel Spectrum – is qualified to hold the license to be assigned. In these deliberations, the Commission is not permitted to weigh whether some future, hypothetical assignee is similarly qualified. Indeed, section 310(d) of the Communications Act of 1934, as amended, states that the Commission, as part of its review of a proposed transfer or assignment, "may *not* consider whether the public interest . . . might be served by the transfer, assignment, or disposal of the permit of license to a person other than the proposed transferee or assignee."<sup>13</sup> Not surprisingly, CTCNet cites no authority that permits the Commission to presume that the proposed assignee is not the party identified as such in the application, but instead a new and different entity whose existence depends on the Commission's approval of a pending merger request.

Unless and until the Commission approves the Sprint Nextel merger, both Sprint and Nextel will continue to operate as separate, unaffiliated companies that for sound business reasons enter into routine secondary market transactions for the assignment or transfer of licenses, including BRS licenses. Freezing routine transactions pending merger would penalize Sprint and Nextel and would establish a precedent harmful to other service providers involved in mergers or other actions, subject to Section 214 and

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<sup>13</sup> 47 U.S.C. § 310(d) (emphasis added).

310 of the Act. This result would also be fundamentally unfair to the assignor, Champion, which has no interest in the proposed merger of Sprint and Nextel.<sup>14</sup>

CTCNet has provided no fact, offered no argument, and made no inference that the instant transaction will in any way harm CTCNet or its members. Further delay of this transaction, however, will harm the applicants and thwart the public interest in timely, efficient, and equitable treatment.<sup>15</sup> The Commission should deny CTCNet's petition with prejudice and reaffirm its consent to the assignment of WLK212 to Nextel Spectrum.

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<sup>14</sup> Champion, in fact, waited over nine years for the Commission to grant the subject assignment application, and it should not have to wait any longer to realize the benefit of the bargain from the sale of this license. On a related note, while CTCNet was able to serve its Petition for Reconsideration on all of the numerous parties involved in WT Docket No. 05-63 plus numerous Commission staffers, it failed to serve Champion, the assignor in this proceeding, and also appears not to have served Champion's counsel. This blatant error is yet another reason that the Commission should expeditiously reject CTCNet's flawed challenge.

<sup>15</sup> See, e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to KAAL-TV, LLC, *et al.*, File No. BALCT-20040609AAL, at 6 (Mar. 11, 2005) ("We will not hold this lawful [joint sales agreement] transaction in abeyance pending the outcome of the JSA rulemaking. Until the Commission makes a definitive conclusion about how it will treat television JSAs, any adverse finding or delay based on the existence of a television JSA would be speculative and prejudicial"); *Applications of Times Herald Printing Co.*, Memorandum Opinion and Order, 25 FCC 2d 984, ¶ 23 (1970) ("We simply do not consider it wise nor equitable to examine this acquisition [of a daily newspaper and a television station] on the basis of a proposed rule that may never be adopted").

### III. CONCLUSION

The Commission should summarily dismiss the Petition for Reconsideration submitted by CTCNet. CTCNet has failed to demonstrate that it has standing to challenge the assignment of WLK212 from Champion to Nextel Spectrum. Moreover, CTCNet has identified no legitimate grounds for reversing the Bureau's assignment grant. Issues related to the proposed merger of Sprint and Nextel are irrelevant to this assignment application.

Respectfully submitted,

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May 19, 2005

**Certificate of Service**

I, Micah M. Caldwell, do hereby certify that on this 19th day of May 2005, I caused true and correct copies of the foregoing Opposition to Petition for Reconsideration to be mailed by first-class, postage-prepaid United States Postal Service mail, unless otherwise indicated, to the following:

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