

**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**

**FURTHER COMMENTS OF  
COMMUNITY TECHNOLOGY CENTERS' NETWORK  
REGARDING SPRINT & NEXTEL SUBMISSIONS OF  
RESPONSES TO FCC INTERROGATORIES**

Community Technology Centers' Network ("CTCNet"), hereby submits further comments in the above-referenced proceeding regarding responses to specific FCC interrogatories filed on May 20, 2005 by Nextel Communications, Inc. ("Nextel") and Sprint Corporation ("Sprint") (collectively the "Applicants").<sup>1</sup> Following an analysis of the Applicants' newly supplied information, CTCNet maintains that, regardless of whether the Commission evaluates the Applicants' 2.5GHz post combination holdings within the major market areas of the top 50 BTAs based on the Applicants' submissions as modified, or alternatively, based on the detailed GSA data provided by CTCNet, the Commission must arrive at the same inexorable conclusion. The merged entity would control too much of the 2.5GHz spectrum in most of the major market areas of the top 50 BTAs to allow for effective competition in the fledgling wireless broadband marketplace

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<sup>1</sup> CTCNet respectfully requests the Commission to consider these Further Comments as an in-cycle pleading responding to the submissions made by the Applicants' in response to the Commission's April 29, 2005 Initial Information and Document Request.

and therefore, as a condition of the grant of the transfer, must be required to divest sufficient owned or leased 2.5GHz spectrum to ensure the potential for competition.

**I. Sprint and Nextel's Response to Interrogatory No. 25 Reiterates the Understated Post Combination Spectrum Holdings Reported in the Their Application, But Confirms the Divestiture of 2.5GHz holdings in Major Market Areas Must be a Condition of the Merger**

CTCNet assumes the Commission's rationale for requesting clarification of the data in its Interrogatory No. 25 is to understand the full extent of the post-merger combined entity's concentration of 2.5GHz spectrum throughout entire BTAs, including major market areas and major market fringe areas. The Commission should be commended for forcing Nextel and Sprint to clarify their original confusing presentation of data, seemingly intended to distract the public from realizing the unhealthy level of control they would wield in the new 2.5GHz wireless broadband industry if this merger were approved without divestiture conditions.

In their response to Interrogatory No. 25, the Applicants simply regurgitate the same understated and confusing data regarding their post combination 2.5GHz spectrum holdings, but they add a column showing the total amount of spectrum across each entire BTA they will jointly control if the merger is approved without divestiture conditions. As CTCNet demonstrates below, no matter how Sprint and Nextel present the data, the public interest requires the Commission to condition any approval of this merger on divestiture of significant 2.5GHz spectrum licenses and/or leases.

In its Petition to Deny the Application, CTCNet demonstrated that the post-combination entity would control a significant and unhealthy level of 2.5GHz spectrum

in the major market areas in the top 50 U.S. BTAs.<sup>2</sup> In short, CTCNet demonstrated that the post merger entity would control *more than 70% of all commercially usable 2.5GHz spectrum in 31 of the major markets located in the top 50 U.S. BTAs, including more than 50% in 38 of those major markets!* CTCNet also demonstrated that for several reasons, the method being utilized by Sprint and Nextel to determine their combined spectrum holdings is erroneous.<sup>3</sup>

Notwithstanding CTCNet's correct yet alarming findings, no matter how the Commission (or Nextel-Sprint) elects to analyze this market, only one conclusion can be reached – Sprint-Nextel must divest 2.5GHz spectrum if the Application is granted.

As CTCNet demonstrated, the Commission must properly evaluate the pertinent spectrum holdings of Sprint and Nextel on a major market licensed/leased GSA basis. The Applicants' own flawed data as reported to the Commission in their initial application, and as further reported in response to the interrogatory, makes clear the significant and unlawful control the combined company would have over spectrum in the

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<sup>2</sup> See Petition to Deny of Community Technology Centers' Network, WT Docket No. 05-63, filed March 30, 2005 ("Petition").

<sup>3</sup> As CTCNet demonstrated, any analysis of the potential anti-competitive concentration of spectrum and market power that the post-combination Sprint Nextel will exert in the 2.5GHz spectrum space in the top 50 BTAs (and nationally) must be examined in the context of licenses covering and service to the major urban population centers from which the present GSA based licensing scheme evolved. The Applicants' attempts to dilute their spectrum holdings in such major market areas by considering it in a larger geographic context, in which the vast majority of all BRS-EBS spectrum was not licensed (i.e., BTAs), including remote rural areas, and EBS white space not presently available to any party, belies the importance for any competitor (regional or national) to have access to spectrum in any of these dense population centers. That some spectrum may remain available to competitors outside the top 50 urban population centers of the top 50 BTAs (but within BTA borders) in sparsely populated rural areas where system costs to reach population is economically prohibitive without access to urban spectrum, does not justify ignoring the near monopoly control the Applicants' will have within the urban centers of the top 50 BTAs if this merger is approved without conditions. The FCC's Interrogatory No. 25 required the Applicants to provide control data in such markets as an average MHz/pop on a wider BTA area basis. Even this manner of examining the Applicants post merger control of spectrum in the 2.5GHz band runs the risk of distorting the higher level of exclusionary control wielded by the Applicants in essential population centers within key BTAs.

major market areas in the top U.S. Markets. However, assuming, *arguendo*, that Sprint-Nextel's understated presentation is the proper analysis, the Applicants themselves have demonstrated to the Commission that they will control over 50% of all 198 MHz of ALL 2.5GHz spectrum across the BTAs (whether available and licensed or unavailable white space), in ***36 out of the top 50 U.S. BTAs, including more than 70% in 21 of the top 50 BTAs.***<sup>4</sup> Even as reported by the Applicants, these numbers are alarming, and demonstrate that grant of this merger without divestiture requirements would be contrary to the public interest and the Commission's mandate to ensure the post-merger entity will not be able to exert undue market power in the new 2.5GHz wireless broadband industry.<sup>5</sup>

Finally, the Applicants' attempts in response to Interrogatory No. 25 to divert attention from and explain away their alarming control over the vast majority of 2.5GHz spectrum nationally as okay because BellSouth has significant holdings in a few regional markets, is of no consequence to the analysis and should be given no weight. CTCNet has demonstrated in its Reply in this proceeding that BellSouth holds significant spectrum assets in a handful of the major market areas of the top 50 BTAs through primarily organic acquisitions made many, many years ago when it was a wireless cable company (that was actually providing wireless cable services in these markets).<sup>6</sup> This factor simply provides absolutely no precedent or rationale for the Commission to

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<sup>4</sup> See Exhibit 1.

<sup>5</sup> Further, as CTCNet has already demonstrated in its Reply, the Applicants' do not need nearly the amount of 2.5GHz spectrum they control in order to roll out ubiquitous wireless broadband service (or what they call WIMS). In fact, services can be cost effectively and fully deployed on 2-3 channel groups at most; using any more spectrum is a waste. See CTCNet Petition at pp. 18-20.

<sup>6</sup> See Reply of Community Technology Centers' Network, WT Docket No. 05-63, filed April 18, 2005.

approve Nextel and Sprint holding most of the major market 2.5GHz spectrum hostage nationwide.<sup>7</sup>

**II. The Applicants' Response to Interrogatory No. 26 Does Not Adequately Respond to The Commission's Request Regarding the Timeframe for Deployment by the Applicants' of Wireless Broadband Services on the 2.5GHz Spectrum and Further Confirms Sprint and Nextel have no Plans to Deploy Any Meaningful Services in the Foreseeable Future**

The Commission's Interrogatory No. 26 requests the Applicants' to provide detailed information regarding their plans to deploy wireless broadband services over the 2.5GHz spectrum. However, in response to this request, Sprint and Nextel answer with a *non sequitur*. Instead of providing details about the technology, specific services to be deployed, and the deployment timeframes – the Applicant's list reasons for the efficiencies that will be created if they are permitted to combine, point to their failures of the past in the 2.5GHz band, and how grant of the merger will help them in the upcoming "transition" of the 2.5GHz bandplan. The fact is, neither Sprint nor Nextel has in the past deployed any meaningful wireless broadband system on the 2.5GHz spectrum, nor have they announced any definitive plans to do so. They appear to be simply warehousing spectrum.

Further, based on actual deployments in the market today, it has been amply demonstrated by several other would-be competitors in the 2.5GHz wireless broadband industry that technology is available **today**, and services may be deployed **today** on the spectrum. Using the "transition" as an excuse not to deploy – is no excuse. In fact, explaining that any deployment on the 2.5GHz spectrum must wait for the transition is, in

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<sup>7</sup> Because BellSouth is also warehousing their 2.5Ghz spectrum holdings right now, the Commission should be even more inclined to force Sprint and Nextel to divest significant spectrum holdings so that nearly all of the spectrum in the major market areas located in the top 50 BTAs is not further warehoused.

effect, Sprint-Nextel putting the Commission and the public on notice that they have no intention to deploy any services on the spectrum for many years.

Clearly, the best way for the Commission to encourage Sprint and Nextel to actually do something with their warehoused spectrum is to free some of this fallow spectrum for competitors who would utilize it to build new wireless broadband networks today. In this manner, the Commission will guaranteed competitive regional and national services in the new wireless broadband services industry will be made available to the public quickly. Given the Commission's mandate to facilitate competition and investment in wireless broadband technologies, the public interest demands nothing less. Allowing Sprint and Nextel to merge into an entity with sufficient spectrum to effectively exclude any competition in the 2.5GHz band for years to come will only further encourage the anti-competitive behavior displayed to date, and is therefore directly contrary to the public interest.

**Conclusion**

Accordingly, for the foregoing reasons, CTCNet respectfully requests that the Application and proposed merger be denied or conditioned on a requirement that the post merger entity divest itself of sufficient spectrum in the 2.5 GHz band to ensure the availability of adequate spectrum for competitive broadband operators within the urban Major Markets defined by GSAs in the largest 100 BTAs in the United States.

Respectfully submitted,

COMMUNITY TECHNOLOGY  
CENTERS' NETWORK

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June 9, 2005

**CTCNET FURTHER COMMENTS, WT DOCKET No. 05-63**

**EXHIBIT 1**

<b>BTA Rank</b>	<b>BTA #</b>	<b>BTA Name</b>	<b>Percentage of BTA Spectrum Controlled</b>
22	29	Baltimore	94%
8	112	Detroit	93%
50	60	Buffalo-Niagara Falls	89%
37	204	Indianapolis	87%
18	402	San Diego	84%
23	350	Pittsburgh	82%
6	101	Dallas-Fort Worth	82%
34	95	Columbus	80%
29	401	San Antonio	80%
14	298	Minneapolis-St. Paul	78%
4	404	San Francisco-Oakland-San	76%
36	364	Providence-Pawtucket	76%
44	329	Oklahoma City	75%
16	84	Cleveland-Akron	75%
30	297	Milwaukee	75%
3	76	Chicago	74%
11	51	Boston	73%
21	440	Tampa-St. Petersburg	72%
38	290	Memphis	71%
15	413	Seattle-Tacoma	70%
17	394	St Louis	69%
27	226	Kansas City	68%
2	282	Los Angeles	68%
7	196	Houston	66%
31	324	Norfolk-Virginia Beach-	65%
28	389	Sacramento	65%
32	314	Nashville	63%
24	61	Cincinnati	63%
26	358	Portland	62%
20	110	Denver	62%
46	27	Austin	61%
1	321	New York	61%
9	461	Washington	59%
47	44	Birmingham	58%
35	399	Salt Lake City-Ogden	57%
5	346	Philadelphia	54%
13	347	Phoenix	46%
26	74	Charlotte-Gastonia	40%
49	106	Dayton-Springfield	29%
39	245	Las Vegas	27%
43	320	New Orleans	11%
40	263	Louisville	10%
45	212	Jacksonville	6%
42	174	Greensboro-Winston-Salem-	5%
33	336	Orlando	4%
12	293	Miami-Fort Lauderdale	3%
10	24	Atlanta	0%
41	366	Raleigh-Durham	0%
48	374	Richmond-Petersburg	0%
19	4ee	San Juan	0%

## CERTIFICATE OF SERVICE

I, Ryan Turner, hereby certify that copies of the foregoing Further Comments of Community Technology Centers' Network Regarding Sprint and Nextel Submissions of Responses to FCC Interrogatories were served this 9th day of June, 2005 via first class mail of the United States Postal Service, unless otherwise noted, on the following parties:

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