

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In re Applications of)
)
NEXTEL COMMUNICATIONS, INC.,)
Transferor,)
)
and)
)
SPRINT CORPORATION,) WT Docket No. 05-63
Transferee,)
)
)
for Consent to the Transfer of Control of)
Entities Holding Commission Licenses and)
Authorizations Pursuant to Sections 214 and)
310(d) of the Communications Act)

**REPLY TO INFORMAL REQUEST OF US UNWIRED INC. FOR COMMISSION
ACTION**

Sprint Corporation (“Sprint”), by its attorneys, hereby submits its Reply to US Unwired, Inc.’s (“US Unwired”) Informal Request for Commission Action (“Informal Request”) submitted on June 2, 2005,¹ in the above-captioned proceeding. US Unwired seeks resolution by the Federal Communications Commission (“FCC” or “the Commission”) of its disagreement with Sprint regarding the rights and obligations arising from a contract between the two companies. Consistent with long-established practice and precedent, the Commission should decline to intervene in this private contractual disagreement.²

¹ Informal Request of US Unwired Inc. for Commission Action, WT Dkt. No. 05-63 (filed June 2, 2005) (*hereinafter* “US Unwired Informal Request”).

² See e.g., *Application of O.D.T. Int’l*, Memorandum Opinion and Order, 9 FCC Rcd 2575, ¶ 9 (1994) (“It has been consistently held that the Commission is not the proper forum for resolving contractual disputes, see *Regents v. Carroll*, 338 U.S. 586 (1950), and we have

Specifically, US Unwired alleges that the “plain language” of its affiliation contracts (“Agreements”) with Sprint “prohibit[s] Sprint from operating the former Nextel network in US Unwired’s exclusive areas after the merger.”³ US Unwired claims the Agreements provide it with the “exclusive right” to operate a wireless network in subject US Unwired’s Service Areas, a term that would be violated by simultaneous operation of Nextel’s iDEN network post-transaction. Additionally, US Unwired accuses Sprint of making “virtually no effort to propose a meaningful, good faith solution” of its concerns under the Agreements.⁴ US Unwired asserts this contractual dispute should be resolved by the FCC before the merger closes to promote efficiency and “ensure that there is no disruption to the service of Nextel’s customers.”⁵

Sprint respectfully disagrees. Contrary to the implications of US Unwired’s advocacy, Sprint takes seriously this dispute and, more generally, its agreements with its affiliate providers of Sprint wireless services. Sprint values its affiliate relationships and looks forward to reaching mutually agreeable arrangements with its affiliates. Sprint is currently in discussions with each of its affiliates to develop a mutually acceptable solution for all parties in association with the pending merger of Sprint and Nextel. Sprint contemplates that the US Unwired matter will be resolved in accordance with the normal mechanisms for dealing with commercial disputes.

Quite plainly, the gravamen of US Unwired’s pleading is that it seeks FCC intervention in this commercial dispute; indeed, US Unwired effectively seeks FCC enforcement of US

consistently indicated that controversies which do not reflect upon the qualifications of a Commission licensee are best left to the local courts for resolution.”).

³ US Unwired Informal Request at 4, 7.

⁴ *Id.* at 4.

⁵ *Id.* at 4.

Unwired's interpretation of the Agreements.⁶ However, the fact that "there is no indication [by Sprint] in the public record"⁷ of the dispute raised by US Unwired should come as no surprise; in voluminous and long-standing precedent, the FCC very correctly has declined the invitation to participate in the adjudication or mediation of commercial disputes in the course of dealing with its jurisdictional obligations. Specifically, the Commission has "found the continued attempt to pursue private contractual disputes 'through the Commission's assignment and transfer review process to be without foundation or merit.'"⁸ Similarly, the Commission has stated that "[i]t is long-standing Commission policy not to involve itself with private contract disputes. Controversies which do not reflect on the qualifications of a Commission licensee are best left to appropriate courts for resolution."⁹ The Commission should continue to observe its well-

⁶ US Unwired's past actions belie its proposed reliance on the FCC to resolve disputes relating to its contract with Sprint. US Unwired currently has pending in a United States District Court claims of breach of contract and other causes of action (unrelated to the pending merger), arising out of the commercial relationship between the parties. *See US Unwired et al v. Sprint Corp., et al*, Case No. 2:03-CV-1326 (W.D. La.). That case is scheduled to begin trial on June 20, 2005.

⁷ *See* US Unwired Informal Request at 3.

⁸ *Applications of Vodafone Airtouch, PLC and Bell Atlantic Corp.*, Order on Further Reconsideration, 17 FCC Rcd 10998, ¶ 6 (2002) (*quoting Pueblo MSA Ltd Partnership*, Memorandum Opinion and Order, 15 FCC Rcd 5439, ¶ 4 (2000)). *See also Application of Bank of America NT & SA, Assignor, and Customtronics, Assignee*, Memorandum Opinion and Order, 16 FCC Rcd 15772, ¶ 5 (2001) ("[W]e... decline to address the merits of the Petition in any event, in light of the Commission's long-standing policy of repudiating involvement in contractual disputes.").

⁹ *Applications of Verestar, Inc. (Debtor-in-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum Opinion, Order and Authorization, 19 FCC Rcd 22750, ¶ 16 (2004). *See also USA Broad., Inc. (Transferor) and Univision Communications, Inc. (Transferee)*, Memorandum Opinion and Order, 19 FCC Rcd 4253, ¶ 9 (2004) (explaining that "the Commission has long held that it is not the proper forum to resolve issues of contract interpretation, as long as a licensee's compliance with Commission rules is not called into question."); *Loral Corp. Request for a Declaratory Ruling Concerning Section 310(b)(4) of the Communications Act of 1934*, Memorandum

established practice here by rejecting US Unwired's request to intervene in a private commercial matter.

The foregoing premises considered, Sprint respectfully requests that the FCC deny US Unwired's Informal Request for Commission Action.

Respectfully submitted,



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Opinion and Order, 12 FCC Rcd 21164, ¶ 13 (1997) (“Controversies which do not reflect upon the qualifications of a Commission licensee are best left to the local courts for resolution. We have specifically stated that we will not interfere in a private contractual dispute[] absent a showing of a violation of the Commission’s rules or federal statute.”); *Application of Metromedia Co. et al for Authority to Transfer Control of Metromedia Co. to Southwestern Bell Corp.*, Memorandum Opinion and Order, 3 FCC Rcd 595, ¶ 8 (1988) (“These facts demonstrate private contractual problems that should be solved by negotiation between the parties or in the courts. We generally will not interfere in private contractual disputes.”); *Application of McAlister Television Enter., Inc. (Assignor) and Marsh Media, Inc. (Assignee) for Assignment of License for Television Station KMCC*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P & F) 1379, ¶ 8 (1986) (“Thus, as a matter of long-standing policy, the Commission does not assume jurisdiction in contractual controversies involving broadcast licensees, recognizing that such matters are generally private in nature and appropriately left to local courts for resolution.”).

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 10th day of June 2005, copies of the foregoing *Reply To Informal Request Of US Unwired Inc. For Commission Action* were electronically served upon the following parties:

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