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July 18, 2005

VIA ELECTRONIC MAIL

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Applications for Consent to Transfer Control of Licenses and Authorizations Held by Nextel Communications, Inc. to Sprint Corporation, WT Docket No. 05-63; Ex Parte Presentation of SouthernLINC Wireless

Dear Chairman Martin:

Southern Communications Services, Inc., d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”), respectfully submits this letter to again urge the Commission to adopt appropriate conditions on the proposed merger of Sprint Corporation (“Sprint”) and Nextel Communications, Inc. (“Nextel”), to ensure the availability of roaming for consumers of iDEN voice, digital dispatch, and data services. SouthernLINC Wireless has already raised this issue in both the comments and reply comments it filed with the Commission during the formal pleading cycle for this proceeding, as well as in a subsequent *ex parte* meeting on May 13, 2005, with Commission staff.

However, recent developments illustrate even more clearly the merger-specific nature of the roaming issues that SouthernLINC Wireless has raised and the need for a merger-specific remedy in the form of a condition on the proposed transaction. Specifically, the Commission should impose a condition that would require the merged Sprint/Nextel entity to provide voice, data, and digital dispatch roaming on reasonable, non-discriminatory terms and conditions and to make such roaming available for all services at reasonable and non-discriminatory rates.

First, as discussed in more detail below, the merger of Sprint and Nextel will trigger a contractual obligation that will result in the roll-up of Nextel’s affiliate Nextel Partners, thus reducing the number of iDEN-based CMRS carriers in the country from three to two: Sprint-Nextel and SouthernLINC Wireless. This degree of consolidation raises far greater concerns than those posed in other wireless mergers reviewed by the Commission – all of which involved GSM or CDMA carriers – since in those cases there were still numerous competitors following the merger using the same network technology as the merger parties.

Second, SouthernLINC Wireless's concerns regarding the effect of the proposed merger on roaming are neither broad in scope nor general to the industry, but rather go directly to the specific actions and behavior of Nextel and Nextel Partners. While SouthernLINC Wireless appreciates the Commission's recognition of the importance of roaming, it believes that any new proceeding on roaming will be neither timely enough nor sufficient or specific enough to address the harm to wireless consumers that would result from this merger absent the specific roaming condition requested herein.

There is ample reason for SouthernLINC Wireless's concern that yet another rulemaking on roaming will be too little too late. Many of the issues and concerns SouthernLINC Wireless has described in this proceeding regarding its attempts to roam with Nextel have already been raised by SouthernLINC Wireless in the Commission's previous roaming proceedings which, after eleven years, have yet to provide any sort of resolution or even guidance, let alone any form of relief. Another rulemaking is likely to take years, with the eventual outcome uncertain. This will not and cannot provide an adequate and timely solution to the immediate, concrete, and specific issues involving the specific parties to this merger.

Finally, SouthernLINC Wireless is deeply concerned that, to this day and throughout the entire course of this proceeding, Sprint and Nextel have been entirely dismissive of roaming or its impact on wireless consumers. This stands in stark contrast to previous CMRS merger proceedings where the merger parties emphasized their intention to be good roaming partners and made specific commitments regarding the availability of roaming services.

Discussion

Currently, Nextel and Nextel Partners provide each other with reciprocal roaming for the full range of iDEN voice, data and digital dispatch services and provide similar roaming services to customers of foreign iDEN carriers as well. However, Nextel and Nextel Partners have consistently denied equivalent roaming services to customers of SouthernLINC Wireless.

As described in detail in its previous submissions in this proceeding, SouthernLINC Wireless has had great difficulty over the years in negotiating a roaming agreement with either Nextel or Nextel Partners and, to this day, still has no roaming agreement with Nextel Partners and has only a limited, non-reciprocal arrangement with Nextel itself that requires SouthernLINC Wireless to pay excessive rates and which restricts SouthernLINC Wireless customers to voice roaming only, while denying them entirely the digital dispatch and data roaming services Nextel provides to customers of Nextel Partners, as well as to customers of foreign iDEN carriers. Furthermore, Nextel chose not to permit its own customers to roam on SouthernLINC Wireless's network at all, thus depriving its own customers of wireless access in areas of the Southeastern United States served by SouthernLINC Wireless, but not by Nextel, Nextel Partners, or even Sprint.

SouthernLINC Wireless's current limited agreement with Nextel will expire soon and, unfortunately, it has become clear over the course of this proceeding that Nextel's position that it does not have any obligation (or intention) to roam with SouthernLINC Wireless on terms equivalent to its other roaming partners will be exacerbated following its merger with Sprint and the roll-up of Nextel Partners. Therefore, SouthernLINC Wireless has concluded that only a specific merger condition will be sufficient to ensure the continued availability of roaming services for iDEN-based wireless consumers.

Although the Commission has looked at the issue of roaming in the context of previous mergers between CMRS carriers, including the Cingular/AT&T Wireless and ALLTEL/Western Wireless mergers, the proposed merger between Sprint and Nextel presents unique issues that must be dealt with specifically in this proceeding. First, this merger involves a distinct customer segment served by very few providers: namely, customers for interconnected voice, "push-to-talk" ("PTT") digital dispatch, and data services based on the iDEN air interface platform, a proprietary wireless technology that is not compatible with either CDMA or GSM networks. In addition to issues of network compatibility, it has been widely recognized – including by the Commission and by the merger parties – that PTT digital dispatch services in particular are a key differentiator of iDEN services. Existing CDMA/GSM-based PTT offerings simply do not offer an effective substitute to iDEN PTT, thus severely limiting the options available for the numerous personal, business, and public sector consumers who highly value the PTT digital dispatch capabilities and robust characteristics of iDEN service.

Throughout this proceeding, Sprint and Nextel have refused to even address the impact of their planned merger on roaming and have instead attempted to dismiss SouthernLINC Wireless's concerns as not "merger-specific." They take this position on the basis that Nextel is the only iDEN carrier that is a party to the merger, and the number of iDEN carriers will thus remain unchanged. However, as demonstrated in the parties' own filings, the proposed merger also triggers a contractual "put option" by which Nextel would be compelled to buy all of the outstanding shares of Nextel Partners that it does not already own. As a result, Nextel would assume 100% ownership of Nextel Partners and Nextel Partners would cease to be even a nominally independent entity.

Unlike the numerous nationwide, regional, and local CDMA or GSM carriers, there are only three commercial iDEN carriers in the entire United States: (1) Nextel, which is a party to the proposed merger; (2) Nextel's partially-owned affiliate Nextel Partners, which provides its services in conjunction with Nextel under the Nextel brand; and (3) SouthernLINC Wireless, a regional carrier that is the only iDEN-based CMRS carrier in the United States that is not affiliated with Nextel.¹ However, as stated above, the total number of commercial iDEN carriers

¹ / There are one or two small wireless carriers that operate in the Western United States using the "Harmony" platform, a proprietary Motorola platform that is based on iDEN technology and which operates on a smaller-scale network. See Motorola's "Harmony" website

in the United States will be reduced from three to two as a direct result of this merger, and SouthernLINC Wireless will therefore be left with only one potential roaming partner.

The roll-up of Nextel and Nextel Partners into a single entity as a result of this merger is not a speculative concern, but is in fact exactly what is happening. On June 23, 2005, Nextel Partners filed a preliminary proxy statement (Form PREM14A) with the Securities and Exchange Commission (“SEC”) calling for a shareholder vote on the “put option,” along with a recommendation from Nextel Partners’ directors strongly urging that shareholders vote to exercise the option and compel Nextel to buy them out. Additional proxy statements and other materials have since been filed with the SEC on behalf of Nextel Partners further advocating a Nextel buyout.²

A more recent – and significant – development is Nextel Partners’ decision to file a lawsuit against Nextel with the New York Supreme Court on July 5, 2005, seeking an injunction against those aspects of the proposed merger that would allegedly violate the marketing, branding, and territorial exclusivity provisions of the joint operating agreement between Nextel and Nextel Partners. A copy of Nextel Partners’ complaint is attached hereto both for the Commission’s convenience and for inclusion in the record of this proceeding. According to the complaint, Nextel Partners is not seeking to stop the actual merger of Sprint and Nextel, but is instead seeking to ensure that it receives the same merger-specific benefits of branding and marketing that the merger parties themselves will receive, as well as assurances that the merged Sprint-Nextel entity will not directly compete with Nextel Partners, particularly in Nextel Partners’ service territory. As stated in Nextel Partners’ public SEC filings, the purpose of the remedies it is seeking is to preserve the company’s valuation when it exercises the “put option” with Nextel. This further demonstrates that the merger of Sprint and Nextel will directly result in the combination of Nextel and Nextel Partners into a single entity, thus eliminating one of only two potential iDEN competitors.

Even if, *arguendo*, Nextel Partners decides not to exercise its “put option,” its complaint makes clear that, under its joint operating agreement with Nextel, it would continue to receive favorable and discriminatory treatment with respect to voice, digital dispatch, and data roaming and other services as compared to what Nextel has been willing to provide to customers of SouthernLINC Wireless.

at http://www.motorola.com/cgiss/harmony/harmony_overview.shtml (last visited July 18, 2005). As far as SouthernLINC Wireless is aware, none of these carriers are able to roam with Nextel or Nextel Partners.

² / Nextel Partners’ SEC filings are available online through the “Investor Relations” link on the Nextel Partners website at <http://www.nextelpartners.com/default.aspx> (last visited July 18, 2005).

At present, Nextel and Nextel Partners, despite being independent businesses, have coordinated their responses to SouthernLINC Wireless's multiple requests to obtain roaming. This coordination caused Nextel Partners to refuse to enter into a reciprocal roaming relationship with SouthernLINC Wireless and caused Nextel to provide only limited, non-reciprocal roaming to SouthernLINC Wireless. It is obvious from Nextel Partners' lawsuit that Nextel and Nextel Partners have coordinated to allocate their sales territories. This market allocation arrangement has allowed Nextel and Nextel Partners to engage in predatory tactics against SouthernLINC Wireless, while insulating each other from competition. The conduct of Nextel and Nextel Partners raises serious concerns under the antitrust laws which prohibit concerted refusals to deal and market allocation agreements.

SouthernLINC Wireless believes that Nextel's already close relationship with Nextel Partners will likely become even closer as a result of the proposed merger and the lawsuit, regardless of whether the Nextel Partners "put option" is exercised. This closer relationship will only exacerbate SouthernLINC Wireless's difficulties in obtaining roaming from the only two suppliers of iDEN roaming services. At the same time, Nextel Partners will continue to enjoy territorial protection against competition from the combined Sprint/Nextel entity, thus giving both Nextel Partners and the post-merger Sprint-Nextel an additional unfair competitive advantage over SouthernLINC Wireless. Although the Commission is not charged with direct enforcement of the antitrust laws, potential antitrust and unfair competition considerations are nevertheless an essential element of the Commission's broader public interest calculus and must therefore be taken into account in its review of the proposed Sprint/Nextel merger transaction.

Finally, SouthernLINC Wireless submits that the roaming issues it has raised in this proceeding are, unlike in other proceedings, specific to the actions and behavior of the merger parties and to the direct consequences of this particular merger. Over the course of the Cingular/AT&T Wireless and ALLTEL/Western Wireless merger review proceedings, as well as in this proceeding, the Commission received several comments from smaller CMRS carriers expressing their concerns over the impact of industry consolidation on roaming. As the Commission recognized, these comments did not identify specific behavior by any particular carrier, but rather expressed a more general and speculative concern over what may happen in the future. Therefore, it may be entirely appropriate for the Commission to address their concerns by initiating a new proceeding on roaming, as it has announced it intends to do.

However, unlike all of these other commenters, SouthernLINC Wireless has throughout this proceeding presented the Commission with specific and concrete facts regarding the ongoing roaming practices of Nextel and Nextel Partners and has provided a detailed description of the specific problems it has experienced over the years in its attempts to negotiate reasonable roaming arrangements with both of these parties. Furthermore, SouthernLINC Wireless has not requested a general "statement of policy" on roaming as other commenters have done, but rather has requested that the Commission adopt measures that directly target Nextel's demonstrated actions, behavior, and course of conduct with respect to roaming.

Therefore, SouthernLINC Wireless submits that the roaming problems it has identified with regard to Nextel and Nextel Partners can only be adequately and appropriately addressed through the imposition of a specific roaming condition in this merger review proceeding.

For the reasons discussed above, SouthernLINC Wireless respectfully requests that the Commission adopt as a condition of its approval of the proposed transaction the obligation for the merged Sprint/Nextel entity to provide voice, data, and digital dispatch roaming on reasonable, non-discriminatory terms and conditions and to make such roaming available for all services at reasonable and non-discriminatory rates.

Pursuant to the Commission's Rules, a copy of this letter is being submitted to the Secretary's office, with copies to the individuals listed below.

Respectfully submitted,



Christine M. Gill

Encl.

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Marlene H. Dortch, Secretary
Michelle Carey
John Branscome
Paul Margie
Barry Ohlson
Louis Peraertz
Sara Mechanic
Scott Delacourt
Peter Tenhula
G. William Stafford
Walter Strack
Jeffrey Steinberg
Paul D'Ari
Ramona Melson
Joel Rabinovitz
James Bird
Neil Dellar
C. Anthony Bush

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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 Application of :
 :
 NEXTEL PARTNERS, INC. and :
 NEXTEL PARTNERS OPERATING CORP., :
 :
 Petitioners, :
 :
 For a Preliminary Injunction in Aid of :
 Arbitration Pursuant to CPLR § 7502(c) :
 :
 -against- :
 :
 NEXTEL COMMUNICATIONS, INC. and :
 NEXTEL WIP CORP., :
 :
 Respondents. :
 ----- x

05109264

ORDER TO SHOW CAUSE

Index No.

FILED
 COUNTY CLERK, N.Y. COUNTY
 JUL 05 2005
 UNSIGNED
 ORDER TO SHOW CAUSE

UPON the annexed Verified Petition of Nextel Partners, Inc. and Nextel Partners Operating Corp., verified on the 4th day of July, 2005; the annexed Affidavit of James Ryder sworn to on the 3rd day of July, 2005; the annexed Affidavit of Erich Joachimsthaler, Ph.D. sworn to on the 4th day of July, 2005; the annexed Affidavit of Larry Chiagouris, Ph.D. sworn to on the 4th day of July, 2005; the annexed Affidavit of Jeffrey Hall sworn to on the 3rd day of July, 2005; the annexed Affidavit of Jessica Newman sworn to on the 4th day of July, 2005; the annexed Affidavit of John Thompson sworn to on the 3rd day of July, 2005; the exhibits annexed thereto; and upon the Memorandum of Law in Support Of Petitioners' Application for a Preliminary Injunction,

SUFFICIENT CAUSE BEING ALLEGED, IT IS HEREBY

ORDERED, that respondents, Nextel Communications, Inc. and Nextel WIP Corp., show cause at a Term, Part ____ (room ____), of this court to be held at the courthouse thereof, located at 60 Centre Street, New York, New York, on the 27th day of July, 2005, at

_____.m., or as soon thereafter as counsel can be heard, why a preliminary injunction in aid of arbitration should not be issued pursuant to CPLR § 7502(c) enjoining respondents, Nextel Communications, Inc. and Nextel WIP Corp., their employes, agents and servants, attorneys, counsel, and any other persons acting for or on their behalf, from: (a) changing the "Nextel" brand identity by expressly or implicitly suggesting that "Nextel" service is being supplied by or is affiliated with "Sprint" or in any other manner unless the new brand identity is made fully available to Partners for use in its business and Partners is given sufficient lead time to permit it to make the necessary operational adjustments to allow it to launch the brand name in tandem with Communications; (b) changing the "Nextel" brand into a product brand marketed to narrow customer segments; (c) marketing CDMA service to existing and prospective National Accounts of Communications or making confidential information concerning Communications' National Accounts available to Sprint; and (d) making any unique "Nextel" billing plan available to "Nextel" or "Sprint" customers under the "Sprint" name; and for any further relief as might be just, proper, and equitable; and it is further

ORDERED, that petitioners may file the aforementioned Memorandum of Law in Support of Petitioners' Application for a Preliminary Injunction, a memorandum which exceeds 30 pages in length; and it is further

ORDERED, that oral argument shall be heard on the return date of this proceeding; and it is further

ORDERED, that service of a copy of this order together with the petition, supporting affidavits, and memorandum of law upon which it was granted by hand upon:

Robert A. Profusek, Esq.
Jones Day
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

and by overnight courier upon:

Jeanne M. Rickert, Esq.
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212,

counsel for respondents, Nextel Communications, Inc. and Nextel WIP Corp., on or before the 6th day of July, 2005, shall be deemed good and sufficient service; and it is further

ORDERED, that respondents, Nextel Communications, Inc. and Nextel WIP Corp. serve their answer(s) and supporting affidavit(s), if any, by hand upon:

Marc Wolinsky, Esq.
Wachtell, Lipton, Rosen & Katz,
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000,

counsel for petitioners, Nextel Partners, Inc. and Nextel Partners Operating Corp., on or before the 18th day of July, 2005; and it is further

ORDERED, that petitioners, Nextel Partners, Inc. and Nextel Partners Operating Corp., file and serve their reply papers upon counsel for respondents, Nextel Communications, Inc. and Nextel WIP Corp., as indicated above, on or before the 25th day of July, 2005.

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Application of :
: NEXTEL PARTNERS, INC. and :
NEXTEL PARTNERS OPERATING CORP., :
: Petitioners, :
: For a Preliminary Injunction in Aid of :
Arbitration Pursuant to CPLR § 7502(c) :
: -against- :
: NEXTEL COMMUNICATIONS, INC. and :
NEXTEL WIP CORP., :
: Respondents. :
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05109264

VERIFIED PETITION

Index No.

FILED
JUL 05 2005
NEW YORK
COUNTY CLERK'S OFFICE

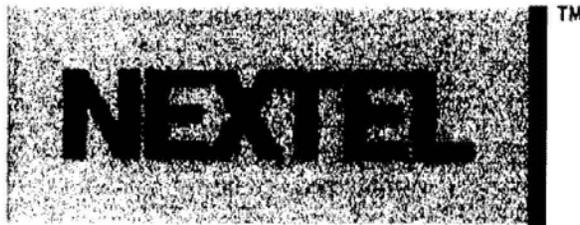
Petitioners Nextel Partners, Inc. and Nextel Partners Operating Corp. (collectively, "Nextel Partners" or "Partners"), as and for their Petition pursuant to CPLR 7502(c) against respondents Nextel Communications Inc. ("Communications") and Nextel WIP Corp. ("NWIP"), allege upon knowledge as to themselves, and otherwise upon information and belief as follows:

NATURE OF THE PROCEEDING

1. This special proceeding for temporary and preliminary injunctive relief pursuant to CPLR 7502(c) is brought by Partners against Communications and NWIP to preserve the status quo pending the outcome of arbitration and assure that Partners does not suffer irreparable injury as a result of the massive and intentional breach by Communications of its agreements with Partners.

2. As detailed below, Partners is a publicly-traded company that provides wireless communications services to over 1.7 million customers located in mid-sized and smaller cities and rural areas in the United States, including Albany, Syracuse, Rochester, Binghamton, Platts-

burg, Ithaca, and Buffalo. Partners markets its services under the "Nextel" brand name using the following distinctive black and yellow logo:



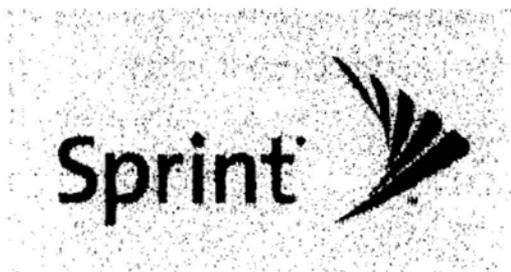
3. Partners uses the "Nextel" brand and logo pursuant to a series of related agreements with Communications, which is a separate publicly-traded company, and NWIP, one of Communications' subsidiaries. Communications markets wireless communications services to 15.5 million customers located in large cities, like New York, under the "Nextel" brand and logo as well. Together, Communications and Partners today provide "Nextel" wireless communications services to 297 of the top 300 markets in the United States.

4. The contracts between Communications, NWIP and Partners provide that the sales and distribution objective of the companies is to "maximize product placement within their respective territories to allow them to more effectively compete with other telecommunications service providers." In furtherance of this objective, the agreements provide as their fundamental promise that Communications and Partners will market wireless services in their respective territories under a single brand name as part of a single, seamless, nationwide wireless network. Communications has the sole responsibility for promoting the "Nextel" brand in national media, something that it has done successfully to the benefit of both itself and Partners. Consumers who subscribe to "Nextel" branded services generally do not even know whether they are receiving service from Communications or Partners. The intent of the joint venture is to appear to the consumer as a single company under the nationwide "Nextel" brand. Consistent with this intent, the agreements provide

that if Communications determines to make a material change to the "Nextel" brand identity, Partners must make the same change at the same time.

5. As alleged in detail below, some time on or after July 13, 2005, Communications will be acquired by Sprint Corporation ("Sprint"), a national telecommunications company with wireless service that presently competes with both Communications and Partners in their respective markets. On June 23, 2005, Communications and Sprint announced that following consummation of their merger, they plan to take steps that, if implemented, would deprive Partners of the essential contractual right embodied in its agreements with Communications, *i.e.*, the right to market wireless service using the same brand as Communications as part of a seamless nationwide service. Specifically, Communications and Sprint announced that they would materially change the identity of the "Nextel" brand and make "Sprint" the "go-to-market brand name of the combined" company. Communications customers will be advised of the change some time in mid-August 2005, and the new brand will be rolled out in a national advertising campaign on or about September 2, 2005. In violation of its agreements, Communications has advised Partners that Partners will not be entitled to use the new brand identity.

6. As part of the fundamental change of the "Nextel" brand identity, the combined company would adopt and market their services using the following new logo:



The logo was specifically designed to transfer the customer loyalty and recognition for the "Nextel" brand to "Sprint" by "infus[ing]" "key elements of the Nextel visual identity" with "Sprint" and "pull[ing] through the strong equity and spirit of the Nextel brand" to "Sprint."

7. As planned by Communications and Sprint, the "Nextel" brand would be converted from a national symbol indicating that a major, vibrant company is the source of "Nextel" services to a secondary product brand within the Sprint service portfolio. Communications and Sprint also stated that, in violation of Communications' agreements, they plan to stop marketing "Nextel" as a mass market, national brand as required by the agreements with Partners, and instead market it only to a narrow audience of "selected businesses, public sector customers" and "high value individuals." And in marketing their products, Communications and Sprint stated that they would falsely represent to all "Nextel" customers, including Partners' customers, that "Sprint" and "Nextel" were one by, among other things, using the following logos for the "Sprint" national and "Nextel" product brands, respectively:



8. In further breach of its agreements, Communications has also stated to Partners' executives that, following the merger, the combined Sprint Nextel will seek to convert the national customers served by Partners in its territory to Sprint service. They have also stated that they will remove the existing "Nextel" brand from Communications' current national pricing plans, called "Free Incoming," and rebrand these rate plans under the new "Sprint" brand. The Free Incoming rate plans have been Communications' and Partners' signature rate plans. Communications

and Partners have extensively promoted these plans in competition with Sprint and other wireless carriers.

9. These massive breaches of the most fundamental promises made by Communications to Partners threaten to cause irreparable injury to Partners and create confusion among Partners' customers. Absent injunctive relief: (a) Partners' ability to compete against Sprint and other wireless service providers will be irreparably harmed; (b) Partner's customers will be misled into believing that Sprint is providing them "Nextel" service; and (c) existing and new customers will be diverted away from Partners to its competitor, Sprint. Communications has acknowledged by contract that such injury is irreparable, and that a party facing the prospect of such injury is entitled to injunctive relief.

10. The agreements governing the obligations and rights of the parties provide for arbitration of all disputes and empower the arbitrators to grant equitable relief. Partners has served Communications and NWIP with a formal notice of breach under the Joint Venture Agreement, triggering the dispute resolution process that includes arbitration. Under the agreement, formal arbitration cannot be commenced for a minimum of 37 days after this notice is provided. As a result, no arbitrators have yet been appointed and, absent cooperation from Communications, none will be appointed for months. There is thus no prospect that arbitrators can be appointed and resolve the issues presented by this petition by September 2, 2005, the date that the new "Sprint" master brand for "Nextel" will be rolled out nationally.

11. CPLR 7502(c) expressly provides that, in these circumstances, this Court has the authority to issue a preliminary injunction to preserve the status quo in order to assure that any arbitration award is not rendered ineffectual. Here, that risk is plain and the threat of imminent irreparable injury to Partners is real. There is therefore a compelling need for this Court to preserve

the status quo so that the arbitrators will be able to afford Partners with the full and complete relief to which it is entitled.

12. Accordingly, as alleged below, petitioner Partners is entitled to temporary and preliminary injunctive relief preserving the status quo pending arbitration by prohibiting Communications and NWIP, and others acting in concert with them, from: (a) changing the "Nextel" brand identity unless that changed identity is made available to Partners and Partners is provided with sufficient time to implement the change at the same time as Communications; (b) changing the "Nextel" brand into a product brand marketed to narrow customer segments; (c) offering existing "Nextel" billing plans under the "Sprint" name; (d) marketing "Sprint" services to existing and prospective "Nextel" national customers; and (e) making confidential information about those accounts available to the Sprint sales force.

PARTIES

13. Petitioners Nextel Partners, Inc. and Nextel Partners Operating Corp. are Delaware corporations with their principal place of business in Kirkland, Washington. Through its wholly-owned subsidiary Nextel Partners Operating Corp., Partners provides wireless communications service to over 1.7 million subscribers located in 13 of the top 100 and 56 of the top 200 metropolitan markets in the United States exclusively under the "Nextel" brand name under a trademark license from respondent NWIP. Partners' markets include smaller and mid-sized cities and rural areas, such as Albany, Syracuse, Rochester, Binghamton, Plattsburg, Ithaca, and Buffalo.

14. Respondents Nextel Communications, Inc. and Nextel WIP Corp. are Delaware corporations with their principal place of business in Reston, Virginia. Nextel Communications, Inc. is the parent of Nextel WIP Corp. and the owner of the "Nextel" trademark. Through subsidiaries, Nextel Communications, Inc. provides wireless communications service to approxi-

mately 15.5 million subscribers located in 202 of the top 300 metropolitan markets in the United States under the "Nextel" brand.

15. Non-party Sprint Corporation is a Kansas corporation with its principal place of business in Shawnee Mission, Kansas. Through subsidiaries and licensees, Sprint Corporation provides wireless communications service to 24 million subscribers in more than 350 metropolitan markets in the United States under the "Sprint" brand. Directly and through its affiliates, Sprint is currently a competitor of both *Communications* and *Partners* in their respective markets. Sprint currently uses this distinctive red and black logo in all of its marketing and advertising:



JURISDICTION AND VENUE

16. This Court has exclusive jurisdiction of all disputes arising under the Joint Venture Agreement and other agreements entered into by *Partners*, *Communications* and *NWIP* under Section 13.20 of the Joint Venture Agreement. Venue is properly laid in this court under CPLR 7502(a).

17. Respondents *Communications* and *NWIP* are subject to the personal jurisdiction of this Court because they are transacting business in New York County. *Communications* and *NWIP* have also consented to the jurisdiction of this Court in Section 13.20 of their Joint Venture Agreement and Section 5 of the agreement (the "Communications Guarantee Agreement") that obligates *Communications* to cause *NWIP* to perform its obligations under the Joint Venture Agreement.

THE JOINT VENTURE

18. Respondent Communications was founded in 1987 under the name Fleet Call, Inc. Communications changed its name to "Nextel Communications Inc." in 1993. Since 1993, Communications has developed and exploited a digital network for wireless communications services using a transmission technology known as iDEN under the "Nextel" brand name. The iDEN wireless service competes with the services offered by other telecommunications companies, but is distinguished from them by, among other things, its ability to provide immediate "push-to-talk" transmission that allows a mobile phone to function like a walkie-talkie. The technology used by Sprint and other wireless communications companies is called "CDMA." CDMA technology operates at a different frequency than iDEN technology and historically has not been able to provide virtually instantaneous "push-to-talk" service. Communications also developed a unique pricing structure for its services that distinguished it from and enabled it to compete effectively against other wireless providers.

19. At the time it was formed and up through 1998, Communications focused its efforts on developing a wireless network serving large cities throughout the United States. In or about 1998, Communications determined that it was essential to its competitive position that it expand the reach of the "Nextel" brand and the use of the iDEN technology to mid-sized and smaller American cities and to rural America. Communications, however, was highly leveraged at the time, and did not have the financial resources necessary to undertake this project on its own.

20. The solution was the creation of Partners, a separate entity with a separate balance sheet that could raise the funds necessary to complete the national roll out of the "Nextel" brand and "Nextel" iDEN service. The creation of a separately owned, managed and financed company enabled the rapid expansion of the iDEN network in mid-size and smaller markets without

requiring Communications to divert its limited capital resources away from the continued growth and expansion of the iDEN network in its major markets.

21. To this end, on May 1, 1998, Communications, NWIP and a predecessor of Partners entered into a Memorandum of Agreement setting forth the proposed scope and structure of Partners. Following the execution of the Memorandum of Agreement, on or about January 29, 1999, Partners, Communications and NWIP entered into a series of related agreements forming a joint venture that would build a nationwide iDEN network serving mid-sized and smaller markets and offer "Nextel" brand wireless services to subscribers in those markets.

22. At the time of the formation of Partners, Communications became the owner of Partners securities that were later converted into 100% of the Class B common shares of Partners, today owning approximately 32% of the common equity of the company, and was granted a seat on the Partners board of directors. The balance of the equity was originally owned by private investors. In 2000, Partners completed its initial public offering and became a publicly traded company. Since the inception of the joint venture, Partners has raised over \$3.4 billion to construct and operate its iDEN network, all in reliance upon the promises made by Communications and NWIP outlined below.

THE JOINT VENTURE AGREEMENTS

23. One of the principal agreements entered into at the time the joint venture was formed is the Joint Venture Agreement between and among Partners and NWIP. At the same time that the Joint Venture Agreement was entered into, Partners and Communications entered into the Communications Guarantee Agreement that, among other things, obligated Communications to cause NWIP to perform its obligations under the Joint Venture Agreement. The parties also executed a Trademark License Agreement that granted Partners an exclusive license to use the "Nextel" trademark to provide iDEN service in its defined Territory in exchange for an annual

royalty payment that would increase over time, and that is now equal to 1% of Partners' gross service revenues. In exchange for this royalty payment and other consideration, Communications promised to promote the "Nextel" brand in national media and make promotional and other marketing materials available to Partners for use in its local markets.

24. The stated purpose and objective of the joint venture was to make "Nextel" a successful and effective mass-market competitor against Sprint and other national wireless companies by making "Nextel" brand wireless service and iDEN technology available to consumers on a seamless basis across the country, regardless of whether the service is provided by Communications or Partners. This purpose and objective is reflected in a Recital to the Joint Venture Agreement, which provides:

By expanding the geographic area in which such services are offered, by providing services with similar features and functions under the same national brand, and by allowing their subscribers to travel and obtain service in each other's territory, the parties intend, among other things, to make iDEN wireless communications service available to more people over a broader area.

25. This purpose and objective is also reflected in Section 10.1 of the Joint Venture Agreement, which provides:

Objective. The sales and distribution objective of the [Communications operating companies] and [Partners] is to maximize product placement within their respective territories to allow them to more effectively compete with other telecommunications service providers.

26. In furtherance of this purpose and objective, Sections 2.2 and 2.3 of the Joint Venture Agreement grant Partners the exclusive right to provide iDEN wireless service in a defined "Territory" consisting of mid-sized and smaller cities and rural areas with an approximate population of 54 million people. NWIP committed in Section 5 of the Joint Venture Agreement to give Partners access to iDEN technology and to the Communications wireless network. Partners committed in Sections 6 and 7 of the Joint Venture Agreement to construct and operate an iDEN wire-

less network in its Territory and to make that network available to Communications and its subscribers. Partners further committed in Section 7 of the Joint Venture Agreement to meet or exceed the performance requirements established by Communications for transmission quality, customer care and customer satisfaction, again, all to provide the "Nextel" customer with seamless service. NWIP, in turn, agreed in Section 5 of the Joint Venture Agreement to make the iDEN network available to Partners' subscribers.

27. The Joint Venture Agreement provides that Partners and Communications would provide service under the same "Nextel" brand and with the same brand identity. Under Section 8.1A of the Joint Venture Agreement, Partners has the right to offer wireless services only under the "Nextel" trademark. Section 8.1A further provides that if Communications elects to make a "material change in its brand identity," Partners must make the same change in the same time frame. The plain intent of this provision, together with the other provisions establishing the joint venture, including, without limitation, the "non-discrimination" provision detailed below, is to prohibit Communications from violating the essential, mutual promise in the Joint Venture Agreement: that Communications and Partners would offer their wireless services as a single seamless nationwide service under a single unified brand.

28. In order to assure that the "Nextel" brand is used and marketed to consumers throughout the country in a consistent manner by both Communications and Partners, Sections 8.2, 8.3 and 8.7 of the Joint Venture Agreement give Communications the exclusive right: (a) to engage in national advertising and to determine the content of that advertising; (b) to set the standards for all local advertising done by Partners in its markets; and (c) to make sales brochures and other promotional material intended for use by Communications' operating subsidiaries available to Partners for its use. Partners' rights with respect to such activities are to "participate in and contribute to discussions regarding . . . future marketing and advertising plans as they relate to United

States marketing," "participate in and contribute to discussions regarding any significant future market researching activities," "participate in and contribute to discussions regarding modifications to the existing specific pricing structures or introduction of new or replacement specific pricing structures," "participate in and contribute to discussions regarding National Account pricing plans," and "participate in and contribute to discussions regarding contracts with national authorized dealers and national retailers." Sections 8.1B, 8.9, 9.1A, 9.3 and 10.3.

29. The Joint Venture Agreement further provides that Partners has the right to sell the same products, services and systems that Communications makes available to its own operating subsidiaries. Specifically, Section 2.6A provides under the heading "Nondiscrimination; Standard of Care":

All products, services and systems that NWIP is required to make available to [Partners] pursuant to this Agreement and the Collateral Agreements will (1) except as provided herein or therein, be the same products, services and systems provided to or used by the [Communications' operating subsidiaries], and (2) be made available to [Partners] in the manner and on the schedule and at the same service levels as provided to or used by the [Communications' operating subsidiaries]. NWIP will provide or cause to be provided to [Partners] all such products, services and systems, and will otherwise deal with [Partners] under this Agreement and the Collateral Agreements in a manner that does not discriminate against [Partners] in favor of the [Communications' operating subsidiaries]

30. Section 9.1 of the Joint Venture Agreement further provides that the pricing of the products and services of Communications and Partners would be coordinated so that "Nextel" customers across the country would receive their services under a uniform pricing structure. Specifically, Section 9.1A requires that Partners adhere to the nationwide service pricing structure established by Communications' operating subsidiaries, and Partners must implement pricing structures that are instituted by Communications' operating subsidiaries on a national level and in local markets that are comparable to the markets served by Partners. Section 9.2 permits Partners to set

pricing levels in local markets, but again, only if they are consistent with the service pricing structure established by Communications' operating subsidiaries.

31. The Joint Venture Agreement also contains express provisions designed to assure that "National Accounts" — *i.e.*, accounts like Xerox, FedEx and IBM that require service in multiple service areas — receive seamless, uniform service and that the business and revenues from those accounts in Partners' territory are serviced by Partners. Specifically, the Joint Venture Agreement provides in Section 11A that Communications would have the exclusive right to negotiate iDEN service agreements with National Accounts. Section 11C then provides that "Each subscriber handset that is part of a National Account will be treated as a subscriber of either [Partners] (or one of its Subsidiaries) or one of [Communications' operating subsidiaries] based on the telephone number of the handset." To the same effect, in order "to maintain consistent pricing for National Accounts," Section 9.3 of the Joint Venture Agreement requires Partners "to honor the pricing plans established by" Communications and its subsidiaries for those accounts, and gives Partners the right "to obtain the benefit of those plans in" its Territory. Information concerning National Accounts must be kept in confidence pursuant to Section 13.10 of the Joint Venture Agreement, in addition to any obligations under applicable law.

32. Section 8.8 of the Joint Venture Agreement provides that "[a]ny customer leads that are generated from either party's website that pertain to the service areas of the other will be forwarded to the other party as promptly as reasonably practicable." Thus, anytime Communications generates a lead through its website for a customer in Partners' Territory, it is required to forward that lead to Partners.

33. The Joint Venture Agreement, Communications Guarantee Agreement and Trademark License Agreement all provide that they are governed by New York law.

"NEXTEL" IS BUILT INTO A SINGLE, NATIONAL, MASS MARKET BRAND USED IN PROVIDING A SEAMLESS NATIONAL SERVICE

34. Following the formation of Partners, and in reliance on the promises made in the Joint Venture and other agreements, Partners raised \$3.4 billion to build and operate the company and, of this amount, directly invested in excess of \$1.6 billion to construct the wireless iDEN communications network in its Territory. Communications, likewise, continued to build its subscriber base, and market the "Nextel" brand nationally in competition with other wireless service providers.

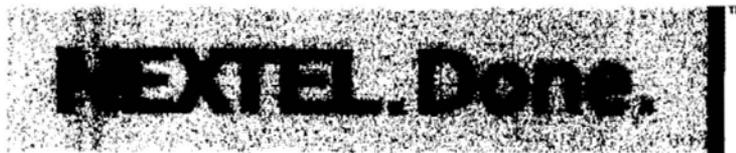
35. Pursuant to the agreements, Communications promoted the "Nextel" brand to mass markets and targeted audiences through national and cable television, radio, newspapers, magazines and sports sponsorships. As part of this marketing effort, in accordance with the provisions of Sections 8.1B, 8.9, 9.1A, 9.3 and 10.3 of the Joint Venture Agreement, Communications would regularly consult with Partners with respect to its marketing, advertising and pricing plans in advance of the institution of those plans.

36. Communications also provided Partners with advertising and promotional materials using the "Nextel" brand for use in Partners' Territory, and made billing plans developed by Communications available to Partners' subscribers. One such group of billing plans unique to "Nextel" service allows "Nextel" subscribers to receive all incoming calls for free. This feature provides "Nextel" a competitive advantage in the marketplace and distinguishes "Nextel" service from that of its competitors.

37. Communications also enhanced its Nextel.com website and made that website available to Partners and its existing and prospective customers. An existing or prospective "Nextel" subscriber that visits the website can, among other things, purchase a "Nextel" phone, pay bills and send emails. Nextel.com promotes "Nextel" services exclusively, and does not display any other name or promote any other provider's wireless services. "Nextel" phones purchased by new

customers located in Partners' Territory are activated by Communications and become Partners' customers, as required by Section 8.8 of the Joint Venture Agreement.

38. In 2003, Communications undertook to change its brand identity by adopting a new "Nextel" logo and strategic marketing plan. Pursuant to Section 8.1B of the Joint Venture Agreement, Communications consulted extensively with Partners in connection with this effort. As a result of this collaboration, Communications adopted the distinctive yellow and black "Nextel" logo and a new strategic and marketing plan. The new brand identity emphasized this strategic objective with the following logo and tag line:



39. The "Nextel Brand Idea" embodied in the logo and the tag line "Done" is that "Nextel" is a brand for "Doers. Others talk, we DO." This brand identity is used universally in national and local advertising and marketing. Pursuant to Section 8.1A of the Joint Venture Agreement, Communications made this new brand identity available to Partners for use in its local markets.

40. As part of the adoption of this new "Nextel" brand identity, Communications prepared Brand Identity Guidelines. The Brand Identity Guidelines make clear that "Nextel" and the distinctive "Nextel" color scheme and logo are not just product brands identifying the service, but symbols that "define[] the framework for how we differentiate ourselves from the sea of sameness that is the wireless category." The Guidelines state that: "Nextel's continued future success will rely on our ability to enact the power of the Nextel brand." The visual identity of that brand is defined by two specific colors: Pantone 7405 coated yellow and 100% K black. The Brand Identity

Guidelines state that "The combination of black and yellow has the strongest visual impact. . . . It's the color of Done. And Nextel owns it."

41. The Guidelines also state that the goal is to create a "winning brand" that:
- "Provides a compass for the entire company, while guiding all behavior and contacts internally and externally."
 - "Builds differentiation beyond products, services and brand communications."
 - "Creates sustainable competitive advantage, as it's difficult to imitate a brand idea that's bigger than the product or branded communications."

42. As a result of the efforts and cooperation of Partners and Communications and as a direct result of the mutual promises made by each company to the other, "Nextel" wireless service today is available in 48 states (the exceptions being Montana and Alaska). The "Nextel" brand today is recognized by consumers on a nationwide basis, and is one of the most valuable brands in the telecommunications field. The identity and recognition of the "Nextel" brand enables both companies to gain customer acceptance for their products and services and enhances their competitive position against Sprint and other telecommunications companies.

43. Pursuant to the Joint Venture Agreement, Communications and Partners provide their respective subscribers with "Nextel" brand service using iDEN technology under the "Nextel" brand name in all of the markets they serve. All "Nextel" subscribers may subscribe to uniform rate plans established by Communications and have access to the services available on Nextel.com, regardless of whether the company providing their service is Communications or Partners. Few "Nextel" customers know that "Nextel" service is provided by two companies; in accordance with the purpose and intent of the Joint Venture Agreement, "Nextel" wireless service is marketed as a single product provided from a single source of supply. National Accounts are sold "Nextel" services by Communications, and each subscriber handset that is part of a National Account that has a phone number originating in Partners' Territory is treated as a Partners subscriber. As a

result, Communications and Partners are successful and effective competitors, under the single "Nextel" brand name, with Sprint, Cingular, Verizon, T Mobile and other wireless service providers.

THE IMPENDING ACQUISITION OF COMMUNICATIONS BY SPRINT

44. Following months of secret discussions and negotiations, on December 15, 2004, Sprint and Communications announced that they had entered into a merger agreement pursuant to which Communications will become a wholly-owned subsidiary of Sprint. The combined company will be listed on the NYSE as "Sprint Nextel Corporation." Following the merger, Sprint intends to spin off its local telecommunications business and focus exclusively on providing wireless service.

45. The merger is subject to shareholder and regulatory approval. Meetings of the shareholders of Sprint and Communications are scheduled to be held on July 13, 2005. Regulatory approval is expected to be obtained some time thereafter. Consummation of the merger is expected to take place some time in August 2005.

46. Consummation of the Sprint/Communications merger will trigger a "put" right of Partners' shareholders provided in Partners' Certificate of Incorporation. The "put" right entitles Partners' Class A shareholders to vote to require NWIP to acquire their shares at "fair market value" to be determined pursuant to an appraisal process following the merger of Communications and Sprint. Partners has publicly disclosed that a special committee of its board of directors is recommending that Partners' Class A shareholders exercise the "put" right. As a result of this "put" right, Communications and Sprint have a strong financial incentive to try to depress wrongfully the "fair market value" of Partners' stock, so that they can claim that they have to pay less to acquire Partners, by diverting Partners' business to Sprint and Communications in anticipation of exercise of the "put" right.

**COMMUNICATIONS' BREACH AND IMPENDING BREACH OF ITS
OBLIGATIONS UNDER THE JOINT VENTURE AGREEMENT**

47. Following the announcement of the Sprint/Communications merger, Sprint and Communications undertook to develop joint marketing, sales, pricing and other plans for the combined company following the completion of the merger. In wholesale breach of its obligations to Partners under Sections 8.1B, 8.9, 9.1A, 9.3 and 10.3 of the Joint Venture Agreement, Communications undertook this planning without consulting with Partners.

48. In late May and June 2005, Partners obtained some limited information about a few of the major aspects of the plans that Sprint and Communications had developed. Specifically, Partners learned that following the consummation of the Sprint/Communications merger, among other things:

(a) Communications would change the fundamental identity of the "Nextel" brand by adopting and promoting on a national basis a new brand identity using the "Sprint" name, *i.e.*, the name of Partners' competitor. Partners also learned that in breach of the fundamental promise of the joint venture agreements as reflected, among other things, in Sections 2.6A, 8.1A and 10.1 of the Joint Venture Agreement, Sprint and Communications did not intend to make this new brand identity available to Partners for use in marketing its services.

(b) Communications and Sprint would unify their sales forces under the leadership of Communications executives and seek to convert National Account customers currently served by Communications and Partners with iDEN technology to the CDMA technology

used by Sprint, a technology that Partners does not offer. As a result, notwithstanding its contractual obligation under Section 11 of the Joint Venture Agreement to market "Nextel" iDEN service to existing and prospective National Accounts on behalf of Partners, former Communications executives and sales personnel would actually market the services of Partners' competitor, Sprint, in Partners' territory, and effectively seek to shut Partners out of the business of serving National Accounts.

COMMUNICATIONS STONEWALLS

49. Upon learning that Communications was planning to change the fundamental identity of the "Nextel" brand without making that new brand identity available to Partners, Partners advised Communications of its concerns and repeatedly requested that Communications honor its obligations under the Joint Venture Agreement. Partners asked, among other things, that Communications make any new brand identity available to Partners as required by the Joint Venture Agreement, and permit Partners to consult with and participate in the development of Communications' marketing and advertising plans following consummation of the merger.

50. Communications failed to respond substantively to these requests. Following further requests from Partners, on June 21, the CEO of Communications contacted the CEO of Partners and indicated that Sprint would not permit him to make the new brand identity of the combined Sprint Nextel available to Partners because Sprint would violate its own agreements with its affiliates if it did so, but that he was still working on the problem.

**COMMUNICATIONS AND SPRINT REVEAL THEIR PLAN TO
VIOLATE PARTNERS' FUNDAMENTAL CONTRACTUAL RIGHTS**

51. The reason for the stone wall put up by Communications became apparent on June 23, 2005, when Communications and Sprint jointly issued a press release and media talking points announcing the new branding and logo to be used post-merger. The press release stated that the "new go-to-market brand name of the combined Sprint Nextel will be Sprint," that "Sprint" would be the "master brand" for the new company, and that the "Nextel" brand would be used only as a product brand under the "Sprint" "master brand."

52. The June 23 press release stated that, in flat breach of Communications' and NWIP's contractual obligation in Section 10.1 of the Joint Venture Agreement to market "Nextel" in a manner to "maximize product placement within their respective territories," Sprint and Communications would market the "Nextel" iDEN service as a niche product, targeting its sales only to a narrow audience of "selected businesses, public sector customers" and "high value individuals."

53. Communications and Sprint also revealed on June 23 that Sprint would adopt a new logo specifically and intentionally designed to appropriate for "Sprint" the goodwill and consumer acceptance associated with the "Nextel" brand. As reflected below, the new logo drops the distinctive appearance and red and black color scheme currently used by Sprint and adopts the distinctive yellow and black "Nextel" color scheme:



Sprint



54. Sprint and Communications also announced that in their national marketing of both "Sprint" and "Nextel" services, they would use the following logos that falsely indicated that the services were from the same source by stating that "Sprint" and "Nextel" are operating "together":

Sprint



Together with Nextel.

NEXTEL

TOGETHER WITH SPRINT



55. In blatant breach of its contractual obligation, Communications made express in its joint announcement with Sprint that the merged company was adopting the distinctive yellow and black "Nextel" color scheme precisely in order to transfer the customer loyalty of "Nextel" customers to Sprint and the "Sprint" brand, Partners' competitor. The distinctive "Pantone 7405 yellow" — "the color of Done" that embodies the "Nextel" brand idea and that "Nextel" "owns" — is being given to Sprint. Thus, the June 23 press release and media talking points provided:

- "The companies are in the enviable position of possessing two incredibly valuable brands with overwhelming positive and powerful equity in the marketplace," said Mark Schweitzer, designated Chief Marketing Officer for the new company and Nextel's current senior vice president of marketing. "Our brand strategy and logo will integrate the most valuable assets of each company's identity."
- "The Sprint name, brand attributes and the sentiment they evoke in minds of consumers are relevant today and provide a great foundation for the future. The combination of these characteristics of the Sprint name with the infusion of Nextel's professional-grade characteristics and key elements of the Nextel visual identity are consistent with what the new company aspires to be in the future," said Schweitzer."
- "Blending elements of Sprint's signature 'pin drop' — representing clarity — and Nextel's bold yellow and black colors — which command attention — the new logo is a powerful symbol for the new Sprint as a forward-moving, energetic and dynamic brand. Additionally, in advertising, the new Sprint visual treatment will include the line, 'Together with Nextel,' as a reminder of the equity of these two strong brands coming together as one. Separately, in advertising featuring Nextel products and services in the combined company's markets, there will be a Nextel visual treatment that uses the current Nextel logo with the language 'Together with Sprint.'"
- "The Sprint name, combined with the visual equity of the Nextel yellow and black on the new going forward symbol, pulls through the strong equity and spirit of the Nextel brand, while creating a differentiated visual platform."

PARTNERS LEARNS ADDITIONAL DETAILS OF COMMUNICATIONS' PLANNED BREACH

56. Following these announcements, on June 24, Partners' CEO sent a message to the CEO of Communications stating that the executives of the two companies needed to meet to resolve the branding and operational issues. The two CEOs spoke on June 27, at which time the

CEO of Communications said that he was "making progress" on getting Partners the ability to use the new brand identity, and suggested that they meet on June 29 and 30 in Reston, Virginia. While Partners' CEO believed these meetings were to include a meeting of the two CEOs, other Communications executives informed executives of Partners later in the day that the Communications CEO would not attend the meetings.

57. The meetings went forward on June 29 and 30 without Communications' or Partners' CEO. Partners' CEO had been prepared to fly to Reston, Virginia until he learned that the Communications' CEO would not attend the meetings. At those meetings, the Communications representatives made clear that Sprint would not permit Communications to make the new "Nextel" brand identity announced on June 23 available to Partners. The excuse given was that Sprint would violate its agreements with its own affiliates if it permitted Partners to use the new "Nextel" brand identity.

58. The Communications representatives also indicated that some time on or after September 2, 2005:

(a) Partners customers accessing Nextel.com would be directed to a website that prominently displays the "Sprint" name and that sells "Sprint" services in competition with Partners' services;

(b) the joint Sprint/Communications sales force would review confidential information concerning the National Accounts served by both Sprint and Communications and use that information to sell them "Sprint" service; and

(c) Communications would permit Sprint to offer to its customers the unique "Nextel" Free Incoming billing plans that allows "Nextel" subscribers to receive incoming calls to their mobile

telephones for free, and would market this "Nextel" billing plan under the "Sprint" name, *i.e.*, the name of Partners' competitor.

PARTNERS INVOKES THE ALTERNATE DISPUTE RESOLUTION MECHANISM OF THE JOINT VENTURE AGREEMENT

59. In the face of Communications' wholesale breach of its obligations, by letter dated July 5, Partners is invoking the dispute resolution mechanism provided in Section 12.6 of the Joint Venture Agreement, a provision that is binding upon Communications under Section 5 of the Communications Guarantee Agreement.

60. The dispute resolution mechanism set forth in the Joint Venture Agreement provides that before either party may initiate arbitration, executives of the two companies must meet within five business days in order to attempt to resolve their differences. If that fails to resolve the issue, thirty days after the original notice of dispute, a second notice may be sent requiring that the CEOs of the two companies meet. That meeting must then take place within five business days after the second notice. It is only at that point that an aggrieved party has the right under the Joint Venture Agreement to demand arbitration.

61. In light of the failure of the executives of the two companies to resolve any issues at their June 29 and 30 meetings or in their prior meetings and discussions, however, Partners has requested that Communications agree to forego the consultation process and proceed immediately to arbitration. Partners has also requested that Communications agree to preserve the status quo pending the appointment of the arbitrators and the presentation of the dispute to them.

IRREPARABLE INJURY

62. Section 3 of the Communications Guarantee Agreement provides that a failure by Communications to cause NWIP to perform its obligations under the Joint Venture Agreement is so "unique and fundamental to [the parties'] bargain that, in the event of non-performance,

it is agreed that the appropriate remedy is injunctive or other equitable relief." Section 3 further provides that:

With respect to these obligations, the parties agree that damages alone are an inadequate remedy, because not all damages will be ascertainable with any reasonable degree of certainty, and because the essence of the parties' bargain is for performance of these obligations. With respect to these obligations, the complex interrelationship of the elements of the Joint Venture is such that only performance (coupled with such other relief, including, without limitation, money damages, as any court, arbitration panel, or other appropriate tribunal may deem appropriate) can restore the benefit of the bargain to the non-breaching party. The parties stipulate that, in the event of a dispute over Section 1(a)(i) and (ii) or Section 2, neither party will urge, argue or claim that damages alone are an adequate remedy or should be the preferred remedy if the tribunal should determine that non-performance has occurred.

63. As acknowledged by the Communications Guarantee Agreement, Communications' failure to honor its contractual obligations and its failure to cause NWIP to honor its obligations under the Joint Venture Agreement will cause irreparable injury to Partners.

64. As alleged, the fundamental promises of the joint venture are that: (a) Communications and Partners would provide "Nextel" service in their respective territories on a seamless basis under a single national brand name; (b) the "Nextel" brand would be marketed on a mass market basis in a manner designed to "maximize product placement"; (c) Communications would sell "Nextel" brand service to existing and prospective National Accounts for the benefit of Partners; (d) the same or similar "Nextel" billing plans would be used by both companies jointly as a competitive tool; and (e) if Communications made a material change to the "Nextel" brand identity, it would make that changed brand identity available to Partners. The purpose of these provisions is to make Partners an effective competitor of Sprint and other wireless service providers in its Territory.

65. Communications' planned breach of these fundamental and essential promises will create irreparable confusion among Partners' customers, falsely suggesting to them that the

"Nextel" service provided by Partners is somehow affiliated with Sprint when, in fact, it is not, and that Sprint is offering "Nextel" service in Partners' territories when, in fact, it cannot. Communications' threatened breach will also deprive Partners of material revenues from existing and prospective National Accounts in an amount that is not ascertainable with any reasonable degree of certainty, and will diminish Partners' ability to compete effectively against Sprint and other wireless companies.

66. The threatened breach will thus irreparably harm the competitive position of Partners in its Territory and, indeed, result in Sprint/Communications becoming a competitor of Partners in Partners' Territory. This customer confusion and damage to the competitive position of Partners will cause irreparable damage to Partners, harm Partners' customers and damage Partners in ways that are not ascertainable with any reasonable degree of certainty.

FIRST CLAIM FOR RELIEF

(Against Communications and NWIP for Breach of Contract)

67. Petitioners repeat and reallege the allegations of paragraphs 1 through 66 of the Verified Petition as if fully set forth at length herein.

68. As herein alleged, respondents Communications and NWIP have breached and are threatening to breach their obligations under the Communications Guarantee Agreement and Joint Venture Agreement. Petitioners will be damaged by these breaches.

69. Petitioners do not have an adequate remedy at law with respect to the breach and threatened breach by respondents Communications and NWIP of their obligations under these agreements.

SECOND CLAIM FOR RELIEF
(Against Communications and NWIP for Breach of the
Implied Covenant of Good Faith and Fair Dealing)

70. Petitioners repeat and reallege the allegations of paragraphs 1 through 69 of the Verified Petition as if fully set forth at length herein.

71. New York law imposes an implied covenant of good faith and fair dealing upon the parties to every contract. Under that implied covenant, a party to a contract may not intentionally take actions that frustrate the ability of the other party to receive the benefits of the contract.

72. As alleged, the fundamental promise of the Joint Venture Agreement and other agreements entered into between and among Partners, Communications and NWIP is that they would provide seamless nationwide "Nextel" wireless service to consumers in their respective Territories in competition with Sprint and other wireless providers. Petitioner Partners invested in excess of \$3.4 billion in constructing a wireless network and operating its business in reliance on this promise at a time when Communications' competitive position was in jeopardy because it did not have a national network and could not afford to build one. This investment by Partners made Communications a viable, national competitor of Sprint and the other national wireless service providers.

73. Having obtained the benefit of the bargain, by their planned actions, respondents Communications and NWIP are threatening to deprive Partners of the essential benefits for which the parties contracted in the Joint Venture Agreement.

74. Petitioners do not have an adequate remedy at law with respect to the breach and threatened breach by respondents Communications and NWIP of the implied covenant of good faith and fair dealing implied in the parties' agreements.

PRAYER FOR RELIEF

WHEREFORE, petitioners Nextel Partners, Inc. and Nextel Partners Operating Corp. demand judgment against respondents Nextel Communications Inc. and Nextel WIP Corp. as follows:

(a) pending final resolution of these disputes by arbitration, temporarily and preliminarily enjoining respondents from changing the "Nextel" brand identity unless the new brand identity is made fully available to Partners for use in its business and Partners is given sufficient lead time to permit it to make the necessary operational adjustments to allow it to launch the brand name in tandem with Communications;

(b) pending final resolution of these disputes by arbitration, temporarily and preliminarily enjoining respondents from changing the "Nextel" brand into a product brand marketed to narrow customer segments;

(c) pending final resolution of these disputes by arbitration, temporarily and preliminarily enjoining respondents from marketing CDMA service to existing and prospective National Accounts of Communications and enjoining Communications from sharing information about "Nextel" National Accounts with Sprint;

(d) pending final resolution of these disputes by arbitration, temporarily and preliminarily enjoining respondents from offering

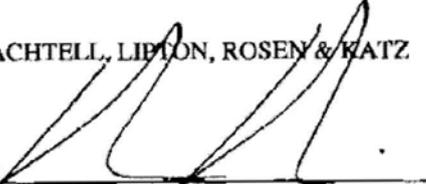
any unique "Nextel" billing plan available to "Nextel" or "Sprint" customers under the "Sprint" name;

(e) awarding petitioners their reasonable attorneys' fees, expenses and costs, as provided in Section 13.2 of the Joint Venture Agreement; and

(f) awarding petitioners such other and further relief as this Court deems appropriate.

Dated: New York, New York
July 5, 2005

WACHTELL, LIPTON, ROSEN & KATZ

By: 

Marc Wolinsky
Jed I. Bergman
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New York, New York 10019
(212) 403-1000

*Attorneys for Petitioners Nextel Partners, Inc.
and Nextel Partners Operating Corp.*

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

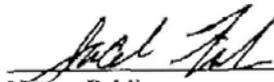
MARC WOLINSKY, being duly sworn, deposes and says:

That he is the attorney for petitioners, Nextel Partners Inc. and Nextel Partners Operating Corp., in the above-entitled action; that he has read the foregoing petition and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes them to be true; and that the reason why the verification is not made by petitioners is that petitioners are foreign corporations.



Marc Wolinsky

Sworn to before me this
4th day of July, 2005



Notary Public

JACOB FRUMKIN
Notary Public, State of New York
No. 01FR8097069
Qualified in New York County
Commission Expires August 18, 2007

INDEX NO.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of

NEXTEL PARTNERS, INC. and
NEXTEL PARTNERS OPERATING CORP.,

Petitioners,

For a Preliminary Injunction in Aid of
Arbitration Pursuant to CPLR § 7502(c)

-against-

NEXTEL COMMUNICATIONS, INC. and
NEXTEL WIP CORP.,

Respondents.

ORDER TO SHOW CAUSE
AND
VERIFIED PETITION

WACHTELL, LIPTON, ROSEN & KATZ
51 WEST 52ND STREET
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PHONE: (212) 403-1000
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*Attorneys for Petitioners Nextel Partners, Inc.
and Nextel Partners Operating Corp.*