

EX PARTE

July 22, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, DC 20554

Re: Applications for Consent to the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. and its Subsidiaries to Sprint Corporation; WT Docket No. 05-63

Dear Ms. Dortch:

On July 11, 2005, the ITFS/2.5 GHz Mobile Wireless Engineering and Development Alliance, Inc. ("IMWED") submitted comments in the above-captioned proceeding asking the Commission to impose conditions that would limit Sprint's and Nextel's rights to lease EBS spectrum under the Commission's rules.¹ A similar request was made by the Media Access Project in subsequent meetings with Barry Ohlson, legal advisor to Commissioner Adelstein, and Paul Margie, legal advisor to Commissioner Copps.² Nothing in these late-filed comments on the merger docket, however, makes any showing that would justify the imposition of restrictions on Sprint's and Nextel's rights to engage in negotiations with EBS licensees that are fully consistent with the Commission's rules.

As an initial matter, IMWED has made similar filings over the last several weeks in the Commission's rulemaking proceeding to review the rules for EBS and BRS operations in the 2.5 GHz band.³ Specifically, IMWED criticized a lease arrangement between Sprint and the Clarendon Foundation as somehow improper despite its demonstrable compliance with all of the Commission's detailed rules governing EBS leases. Sprint and the Clarendon Foundation have entered into a lease that complies with the Commission's rules and serves the public interest by positioning the spectrum for more intensive use. IMWED has not made any demonstration that would prove otherwise. We note that IMWED is making these assertions, not the lessor, the Clarendon Foundation.

¹ Comments of the ITFS/2.5 GHz Mobile Wireless Engineering and Development Alliance, Inc. ("IMWED"), WT Docket No. 05-63 (filed July 11, 2005).

² Notice of *ex parte* presentation by Harold Feld, Media Access Project, WT Docket No. 05-63 (filed July 15, 2005); Notice of *ex parte* presentation by Harold Feld, Media Access Project, WT Docket No. 05-63 (filed July 18, 2005).

³ See Supplement to Petition for Reconsideration of IMWED, WT Docket No. 03-66 (filed June 20, 2005); Petition for Extraordinary Relief of IMWED, WT Docket No. 03-66 (filed July 14, 2005).

It is clear that IMWED is attempting to use this merger proceeding to leverage the result it is seeking in the separate 2.5 GHz rulemaking proceeding (while unreasonably narrowing the applicability of its requests to Sprint and Nextel).⁴ In fact, every one of the conditions IMWED now seeks to impose on Sprint and Nextel here has been sought by IMWED in the reconsideration phase of the 2.5 GHz rulemaking proceeding.⁵

IMWED makes no effort to explain why the conditions it has generally sought to impose on all licensees and lessees in the pending rulemaking proceeding should now be uniquely imposed on Sprint and Nextel. Attempting to circumvent Sprint's and Nextel's opposition to these conditions in the 2.5 GHz rulemaking proceeding is not a sufficient justification for imposing conditions on this merger; nor is it evidence of harm to the public interest caused by the merger. As such, IMWED's request falls squarely within Commission precedent which makes clear that merger reviews are an improper forum for making "those legal determinations [that] would have industry-wide application, as well as legal and practical implications that extend far beyond the contours of [the] particular merger."⁶ To the extent that any of IMWED's arguments deserve further attention,⁷ the Supreme Court has explained that rulemaking proceedings are "generally 'better, fairer, and more effective'" for the purposes of "implementing a new industry-wide policy" than are the "uneven application of conditions in isolated" adjudicatory decisions.⁸

Moreover, although IMWED and the Media Access Project seem to suggest something improper about Sprint's and Nextel's leases in the 2.5 GHz band, they can point to no conduct that runs afoul of the Commission's rules. Their theoretical and paternalistic view of EBS licensees and their commercial lease arrangements is the quintessential "solution in search of a problem."⁹

⁴ IMWED Comments at 5-6.

⁵ See IMWED Petition for Reconsideration, WT Docket No. 03-66 (filed Jan. 10, 2005) at 9-11 (seeking to limit the right of EBS licensees to offer purchase rights to lessees and seeking to require licensees to submit unredacted copies of leases, including commercially sensitive confidential material); IMWED Consolidated Opposition to Petitions for Reconsideration, WT Docket No. 03-66 (filed Feb. 22, 2005) at 16 (opposing the right of EBS licensees to freely negotiate renewal provisions).

⁶ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816 ¶ 126 (2000).

⁷ As Sprint and Nextel made clear in the 2.5 GHz rulemaking proceeding, the imposition of onerous restrictions on EBS leases are unnecessary and do not serve the public interest. See Sprint Consolidated Opposition to Petitions for Reconsideration, WT Docket No. 03-66 (filed Feb. 22, 2005) at 2-7; Nextel Consolidated Opposition to Petitions for Reconsideration, WT Docket No. 03-66 (filed Feb. 22, 2005) at 23-26.

⁸ *Cnty. Television of So. California v. Gottfried*, 459 U.S. 498, 511 (1983).

⁹ *Cf. Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977). For twenty years the Commission had a policy of allowing licensees to redact commercially sensitive information from filed leases without any adverse consequences to the public interest. Nothing in these two decades suggests the current rule on disclosure raises any cause for concern.

Ms. Marlene H. Dortch

July 1, 2005

Page 3

Finally, the proposed conditions would not serve the public interest and could in fact prove to be extremely harmful to EBS licensees. These proposed conditions, if adopted, would stifle the ability of EBS licensees to fully extract the value of their leases.

Accordingly, Sprint and Nextel respectfully request the Commission decline IMWED's and the Media Access Project's invitation to impose unnecessary and potentially harmful conditions on Sprint's and Nextel's leases with EBS licensees.

Respectfully submitted,

/s/ David M. Don

David M. Don

Counsel to Sprint Corporation

/s/ Renee Callahan

Renee Callahan

Counsel to Nextel Communications, Inc.

cc: Samuel Feder
John Branscome
Paul Margie
Barry Ohlson
Scott Delacourt