

service while reducing the number of its cell sites, capital expenditures, and operational costs. By adding CDMA equipment to Nextel's existing and future cell sites, Sprint Nextel will likely be able to co-locate a reasonable number of CDMA and iDEN cell sites while improving CDMA coverage.²⁹⁷ This approach should enhance CDMA quality of service, reduce the need to build additional cell sites, and reduce cell site operating costs.²⁹⁸

139. We believe that it is also likely that Sprint Nextel will be able to reduce backhaul costs as a result of the merger. After the merger, a considerable proportion of Nextel's backhaul traffic may be shifted from facilities currently leased from other carriers to Sprint's wireline network.²⁹⁹ The use of the Sprint long-distance network and the metropolitan area networks may enable Sprint Nextel to bypass much of the ILEC transport facilities in several areas of the country.³⁰⁰ This may enable Sprint Nextel to reduce operating expenses.³⁰¹

140. It is also likely that Sprint Nextel will achieve merger specific efficiencies in information technology, billing, customer care, sales and marketing systems.³⁰² The Applicants also note that the merger eliminates the need for Nextel to deploy its own advanced wireless service.³⁰³ Although the Applicants assert that cost avoidance is estimated at \$4.8 billion, it is not possible for us to verify the magnitude of the savings because this amount depends, in part, on the technology that Nextel would have selected to provide advanced services had it not merged with Sprint.³⁰⁴ The Applicants contend that Nextel had not yet decided on a technology for delivering advanced services to its customers.³⁰⁵ In addition, Sprint would necessarily have additional costs to replace its network, as well as to migrate Nextel customers to its new advanced technological standard. However, the scale economies associated with implementation of a larger network may enable Sprint Nextel to negotiate lower prices from suppliers. In addition, Nextel can benefit from the investment that Sprint has already made to upgrade its own CDMA network.³⁰⁶

d. Intermodal Competition

141. We conclude that the proposed merger is likely to result in benefits to the nascent competition between wireless and wireline services for local telephony services provided to mass market consumers.³⁰⁷ As the Commission has noted in numerous proceedings, a limited but growing proportion of mass market consumers use wireless networks as their primary connection to the public switched

²⁹⁷ Application, Public Interest Statement at 37-38. See also Valente and West Decl. at ¶¶ 7, 35-36, and 52.

²⁹⁸ *Id.*; CRA Analysis at 10-12 ¶¶ 26, 28-30. Montagner and Neilsen Decl. at ¶¶ 3, 5, 7, 12, and 19. [REDACTED]

²⁹⁹ Application, Public Interest Statement at 41. Note that Sprint's wireline network includes the Sprint-owned long-distance network and metropolitan area networks in 30 markets across the U.S. *Id.*

³⁰⁰ *Id.*

³⁰¹ CRA Analysis at 15-16 ¶¶ 39, 40. Montagner and Neilsen Decl. at ¶¶ 3, 5, 18 and 21. [REDACTED]

³⁰² Application, Public Interest Statement at 36.

³⁰³ *Id.* at 34-35.

³⁰⁴ *Id.* at 35.

³⁰⁵ *Id.* at 34-35.

³⁰⁶ *Id.* at 36.

³⁰⁷ The mass market consists of residential customers and very small business customers. See, e.g., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Report and Order and Order on Remand*, 18 FCC Rcd 16978, 17063 ¶ 127 (2003); *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14088-89 ¶ 102; *WorldCom-MCI Order*, 13 FCC Rcd at 18040-41 ¶¶ 25-26.

telephone network or have chosen to “cut the cord” and use wireless services in lieu of wireline services for all of their local exchange services.³⁰⁸ The Commission has consistently sought to create the regulatory conditions for robust intermodal competition, and we remain strongly committed to achieving that important policy goal.³⁰⁹

142. We find that the proposed acquisition is likely to result in greater intermodal competition based on the fact that the Applicants are independent wireless carriers.³¹⁰ First, we agree with the Applicants that the lack of a wireline affiliation in the instant application is relevant to our determination of the likelihood of benefits to intermodal competition between mobile wireless and wireline services. Nextel is an independent wireless carrier, and we classified Sprint as an independent wireless carrier in the *Cingular-AT&T Wireless Order*.³¹¹ The Commission has found that an independent wireless carrier’s incentives can differ significantly from those of a wireline-affiliated carrier. Specifically, the Commission determined in the *Cingular-AT&T Wireless Order* that a wireline-affiliated carrier would have an incentive to protect its wireline customer base from intermodal competition while an independent wireless carrier would not.³¹² The Applicants cite to service offerings and promotions their respective firms have undertaken that arguably have encouraged wireless substitution for wireline voice services.³¹³ The Applicants present data that demonstrates that independent wireless carriers have a larger percentage of wireless-only customers than customers of ILEC-affiliated wireless carriers.³¹⁴ Moreover, there is no evidence that Sprint’s or Nextel’s mobile wireless strategies are influenced by a concern over any detrimental impact on subscription to wireline local exchange service. Furthermore, information Sprint has provided about its pricing strategies indicates that the prices of its wireless offerings are not related to whether the service is being offered within or outside of its wireline company’s footprint.³¹⁵ Although the transaction will result in the loss of one independent mobile wireless competitor to wireline mass market services, we nevertheless conclude that post-acquisition the merged firm will act in a manner that is likely

³⁰⁸ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21611 ¶¶ 237-242 (citing prior orders).

³⁰⁹ *Id.* at 21619 ¶ 250.

³¹⁰ We use the term independent wireless carrier to mean a wireless carrier that is not owned or controlled by an incumbent LEC, or, if owned or controlled by an incumbent LEC, one that has wireline operations significantly smaller than its wireless business. *Id.* at 21612 ¶ 237 & n.556.

³¹¹ The Commission considered Sprint as an independent wireless carrier given the small size of its wireline operations relative to its wireless operations. *See id.* We note also, as stated above, that Sprint has expressed its intention to spin off its ILEC business to its shareholders sometime after the closing of the proposed merger. *See supra* Section II.B.

³¹² *Id.* at 21615 ¶ 243 (“Thus, unlike Cingular whose strategies are influenced by SBC’s and BellSouth’s concerns about wireline revenues and access lines, AT&T Wireless is not likely to be concerned with the impact of its strategies on wireline revenues or access lines, except to the extent that they represent a potential source of new wireless customers.”).

³¹³ Nextel Response to FCC Information Request No. 1 at 1 (*e.g.*, Nextel’s Campus Unlimited Program, which permits customers to receive unlimited cellular service within a “virtual” calling area covering a corporate or institutional campus, and Nextel’s testing of advanced broadband services which will lead a substantial portion of Nextel’s customers to cancel their DSL subscription); Nextel Response to FCC Information Request No. 3 (*e.g.*, first wireless carrier to offer free incoming minutes); Sprint Response to FCC Information Request No. 3 (*e.g.*, first carrier to offer E911 Phase II services with a handset-based location technology, first carrier to offer unlimited Nights and Weekends to wireless customers, and offering of Fair and Flexible pricing plans to reduce overage charges).

³¹⁴ [REDACTED]

³¹⁵ [REDACTED] *See also* Application for Authority to Transfer Control of Licenses and Authorization Held by AT&T Wireless Services, Inc. to Cingular Wireless Corporation, Attach. Decl. of Richard Gilbert, Tables A-1-A-3.

to increase intermodal competition between wireless and wireline services.

143. Second, we conclude that intermodal competition may benefit from the merger efficiencies discussed above.³¹⁶ The Applicants have identified savings from lower development and deployment costs, information technology, billing, sales, and marketing expenses, which should permit the firm to charge lower prices and provide better services.³¹⁷ Other sources of post-acquisition cost-savings include improved network coverage and utilization of Sprint's metropolitan area networks for Nextel's backhaul needs.³¹⁸ To the extent that these and other possible efficiencies result in lower prices and/or quality of service improvements, intermodal competition is likely to increase as these benefits increase the attractiveness of mobile wireless service relative to wireline service.

e. Public Safety

144. We do not find that the merger will benefit public safety. The record does not clearly demonstrate significant merger-specific benefits in the near term with respect to E911 deployment,³¹⁹ CALEA implementation,³²⁰ 800 MHz rebanding,³²¹ or homeland security.³²² We are particularly

³¹⁶ See *supra* Section V.A.7.(iii).

³¹⁷ *Id.* See also CRA Analysis at 5-10 ¶¶ 13-25; Montagner and Nielsen Joint Decl. at ¶¶ 8-12.

³¹⁸ See also CRA Analysis at 10-16 ¶¶ 26-40; Valente and West Joint Decl. at ¶¶ 11-13 [REDACTED]

³¹⁹ Although NENA supports the proposed merger, noting that Sprint and Nextel have demonstrated a commitment to making E911 services available throughout the nation, it does not elaborate on its reasons for believing that the capabilities of each company to implement and improve E911 services will be strengthened by the merger, nor does it predict that such enhanced capabilities would necessarily result in faster or more widespread deployment of E911 service than would otherwise be the case. See Letter dated May 4, 2005, from Bill McMurray, ENP, President, NENA, to Marlene Dortch, Secretary, FCC. While we attach significant weight to NENA's views on this subject by virtue of its critical and unique role in E911 deployment efforts, we believe, as discussed *infra*, that the overall record does not support a positive appraisal of the merger's effect on E911 deployment. On the other hand, we do not believe that the record raises such significant concerns that the proposed merger may hinder or retard E911 implementation efforts that would warrant adoption of any special E911-related conditions. See SAFE Competition Coalition Petition to Deny at 10; New Jersey Division of the Ratepayer Advocate Reply at 7. The Commission retains ample enforcement sanctions at its disposal if Sprint Nextel fails to meet its E911 obligations.

³²⁰ With respect to CALEA obligations, the Applicants state that their ongoing compliance efforts will continue unabated, but do not claim that the merger will further their efforts in that area. See, e.g., Application, Public Interest Statement at 61 n.156 (indicating that the proposed merger "may further the applicants' efforts to meet their CALEA obligations) (emphasis added); [REDACTED]

³²¹ The Applicants have stated their intent to have Sprint Nextel step into the shoes of Nextel with respect to its 800 MHz re-banding commitments. Application, Public Interest Statement at 61-63. This merely reaffirms commitments that Nextel has already made and would be obligated to meet in the absence of the merger. Therefore, while we regard the Applicants' commitment as vitally important to fulfillment of the objectives of the 800 MHz proceeding, we do not regard it as a merger-specific benefit. See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, 19 FCC Rcd 14969, 15128-15129 ¶ 342 (2004) ("*800 MHz Report and Order*") and *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) ("*Supplemental Order*").

³²² The Applicants represent that the merger would enhance network diversity and redundancy, and hence network reliability. See, e.g., Application, Public Interest Statement at 60. We discount the significance of this factor for the same reason we did so in the *Cingular-AT&T Wireless Order*. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21609 ¶ 229 (observing that "any benefits for homeland security and public safety will not be realized overnight -- they depend on the successful integration of the two existing networks, with all of the difficulties entailed in that effort").

concerned about the merged entity's progress toward E911 compliance. The applicants are obligated by FCC rule to ensure that 95 percent of handsets are Phase II E911 compliant by December 31, 2005. Nextel has admitted that it "anticipates that Sprint Nextel will likely not achieve the Commission's 95 percent A-GPS handset penetration requirement until December 31, 2007."³²³ The FCC has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety. The provision of 911 service is critical to our nation's ability to respond to a host of crises. This Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans. We believe that E911 deadlines are therefore critically important. The fact that the applicants have indicated that they will likely fail to meet our E911 December 31, 2005 penetration requirement significantly undermines any public safety benefits they claim for this merger. We confirm our commitment to the E911 rules and remind the Applicants that they, like all carriers, are obligated to comply with our E911 rules, including the requirement that carriers electing a handset-based E911 solution achieve 95 percent penetration by the end of this year.³²⁴ We will not hesitate to take enforcement action if this deadline is not met.

B. 2.5 GHz Band

145. In this section, we analyze the potential for both competitive harms and public interest benefits arising from the proposed transaction's aggregation of Sprint and Nextel's spectrum holdings in the 2.5 GHz band. As explained below, we find that the record here supports neither the allegations of harms nor those of substantial anticipated benefits.

146. In 2003, the Commission, recognizing the lack of vigorous development and use of spectrum in this band, initiated a proceeding to realign the 2.5 GHz band plan³²⁵ and adopt more flexible technical rules to permit the provision of new and innovative wireless services.³²⁶ In July 2004,³²⁷ the Commission transformed the rules and policies governing the licensing of the Educational Broadband Service (EBS), formerly known as the Instructional Television Fixed Service (ITFS), and the Broadband Radio Service (BRS), formerly known as the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS), in the 2.5 GHz band. Specifically, the Commission realigned the interleaved band plan into three spectrum blocks,³²⁸ and established a transition plan for relocating EBS and BRS licensees from their current channel locations to their new spectrum blocks.³²⁹ Under the new flexible rules, it has not yet become clear exactly what services and markets

³²³ Letter from Larry Krevor, Sr. Vice President – Regulatory Affairs, Nextel to Marlene H. Dortch, Secretary, Federal Communications Commission (July 26, 2005) (Nextel has committed to file, no later than September 30, 2005, a request for a waiver of the December 31, 2007, deadline).

³²⁴ 47 C.F.R. 20.18.

³²⁵ As noted above, the term 2.5 GHz band includes the 2150-2162 MHz band as well as the 2500-2690 MHz band. See note 3 *supra*.

³²⁶ See *BRS/EBS NPRM*, 19 FCC Rcd at 6722.

³²⁷ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004), *modified*, 19 FCC Rcd 22284 (2004) (*BRS/EBS R&O & FNPRM* as appropriate).

³²⁸ *BRS/EBS R&O*, 19 FCC Rcd at 14184 ¶ 38.

³²⁹ *Id.* at 14194-14208 ¶¶ 68-103. Under the timeline adopted by the Commission, the transition should be completed by October 2009, although it may be longer in some cases if dispute resolution procedures are used. Also, some areas of the country will not be transitioned according to the transition rules adopted by the Commission in the *BRS/EBS R&O*. The Commission has sought comment in the *BRS/EBS FNPRM* on what to do in markets that (continued....)

will develop following completion of the transition plan.

147. Sprint and Nextel are the two largest current holders of rights to spectrum in the 2.5 GHz band.³³⁰ Sprint holds spectrum rights in 190 BTAs, on average 26.8 MHz licensed and 57.7 MHz leased in each BTA. Nextel holds rights in 281 BTAs, on average 35.7 MHz licensed and 53.7 MHz leased in each BTA. In most cases, these holdings do not significantly overlap, and the proposed merger will combine applicants' regional holdings into a virtually nationwide footprint in the 2.5 GHz band (nearly 85% of the pops in the top 100 markets).³³¹

148. Applicants argue that this combination will produce public interest benefits, after transition of the 2.5 GHz band, by allowing Sprint Nextel to accelerate the deployment of "wireless interactive multimedia services" (WIMS).³³² Although some new broadband uses in the 2.5 GHz band are still in the developmental stage, Applicants envision that WIMS will be a mobile and fixed, interactive service that will provide fast initial average downlink throughput rates per carrier of 2Mbps to 4Mbps.³³³ Applicants expect that these services will likely be data-centric and focused on stationary and portable consumer electronic and computing-oriented devices and hardware.

149. On the other hand, Petitioners and commenters argue that the proposed transaction would create excessive concentration in a unique spectrum resource that could allow Sprint Nextel to develop market power in yet to be developed markets, resulting in public interest harms such as higher prices, lower incentives to innovate, and warehousing.

150. As an initial matter, we reject Applicants' assertion that BRS is too nascent to be considered in our review process.³³⁴ We believe, as CFA/CU argues, that it is appropriate to consider the impact of the proposed merger on existing and developing uses of the BRS spectrum and leased EBS spectrum.³³⁵ Given the history of underutilization of this spectrum³³⁶ and the uncertainty concerning

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do not transition pursuant to the rules it adopted. *Id.* at 14265 ¶ 265. The Commission is currently reviewing petitions for reconsideration or clarification and comments on the *BRS/EBS R&O*.

³³⁰ We also note that this transaction also involves 13 Cable Television Relay Services (CARS) licenses. CARS is an auxiliary service principally limited to the transmission of video signals.³³⁰ The licenses are held by Nextel in support of wireless cable operations of the former MMDS licenses. The principal uses of these licenses must continue to be video operations and, should that operation cease, the licenses must be surrendered. These licenses, therefore, have no impact on our analysis.

³³¹ Application, Public Interest Statement, at 47.

³³² Application, Public Interest Statement at 42. Applicants also state that they plan to use their spectrum in the 2.5 GHz band to provide high-bandwidth backhaul connections. Applicants Reply at 21, n.63.

³³³ Rowley/Finch Decl. at 3.

³³⁴ Application, Public Interest Statement at 52.

³³⁵ CFA/CU Reply at 6. We are not convinced that all of the Petitioners have adequately demonstrated that they have standing. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21522 n. 196. For example, the declaration submitted by CFA/CU in support of its standing is deficient because the declarant failed to make any specific claims regarding his current ownership or use of a wireless phone that would demonstrate that he would be directly affected by the order. See CFA/CU Reply at 8, Declaration of Mark Cooper; *Compare Consumer Federation of America v. FCC*, 348 F.3d 1009, 1012 (D.C. Cir. 2003). However, we need not decide the standing issue because we do not, in any case, find petitioners' arguments for denial of the applications persuasive. In addition, even absent standing, we still have discretion to consider their pleadings as informal objections. See *Nextel License Holdings 4, Inc.*, 17 FCC Rcd 7028, 7033 ¶ 16 (2002). We also note Applicants' argument that petitioners did not include proof of service. Joint Opposition to Petitions at 6, n.14.

³³⁶ For a detailed discussion of the history of the 2500-2690 MHz band, see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and (continued....)

when and what types of new services will be provided using this spectrum (and what competing services there will be at the time), we find it neither prudent nor possible to define precise relevant product or geographic markets as we have above for Sprint and Nextel's other licenses supporting mobile telephony.³³⁷ Instead, we assess the potential effects of the BRS spectrum transfer on competition in the two existing relevant product markets where BRS seems most likely to be used: (1) the mobile data services market, and (2) the fixed broadband services market. We follow the Commission's decision in the *Cingular-AT&T Wireless Order* and do not count spectrum holdings in the 2.5 GHz band as potential spectrum for the provision of voice service for the purposes of our review.³³⁸

151. Under this approach, considering the record before us, we conclude below that the merger of the Applicants' holdings in the 2.5 GHz band will not likely result in public interest harms and that the alleged benefits are insufficiently concrete. We find the harms of undue concentration alleged by Petitioners unlikely and/or not merger-specific for a number of reasons. The holdings of the applicants do not generally overlap, and the merger would thus not increase concentration in most local markets. Substantial amounts of 2.5 GHz spectrum remain for other competitors. Sprint Nextel will have strong, nationwide competitors with sufficient spectrum outside the 2.5 GHz band and powerful incentives to compete in all the potentially relevant product markets. The 2.5 GHz band does not appear to be a uniquely suitable input for any specific market. The degree and type of concentration resulting here is consistent with the policies reflected in the rules governing the auctioning and transfer of this particular spectrum. The onset of competitors' needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for Advanced Wireless Services (AWS). Given these factors, a nationwide footprint in the 2.5 GHz band does not bestow a unique or excessive competitive advantage. Furthermore, Applicants' commitment to develop the spectrum, which we make a condition to our approval of this merger, gives additional comfort against any potential for relaxed incentive. We therefore conclude that the petitions to deny the transfer application based on effects on BRS and EBS spectrum do not raise substantial and material questions of fact.³³⁹ Finally, we further

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Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; *Notice of Proposed Rulemaking*, 19 FCC Rcd 6722, 6726-44 (2003) (*BRS/EBS NPRM*).

³³⁷ See *supra* Section V.A.

³³⁸ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560 ¶ 81. CFA/CU argues that the merger could affect the pricing of or demand for voice services, and we must therefore consider concentration of cellular, PCS, SMR and other spectrum suitable for mobile telephony, in assessing the impact of the merger. CFA/CU Petition at 8-9. Preferred asserts that the Commission's view of 2.5 GHz spectrum in the Cingular-ATT Wireless merger must be changed here to reflect that it can and may be used to provide mobile telephony services. Preferred Pet. at 11. We note that the *BRS/EBS R&O* which designated the band to permit mobile service, which includes CMRS service, was released on July 29, 2004, before the *Cingular-AT&T Wireless Order* which was released on January 10, 2005. See *BRS/EBS R&O*, 19 FCC Rcd at 14165; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21522. We continue to believe that, in light of the nascency of interconnected services in the 2.5 GHz band and the challenges associated with providing such services in this band, it remains premature, and imprudent at such an early juncture in the transition of the band, to consider spectrum in the 2.5 GHz band for the purposes of voice service. Significantly, less than four months passed between the release of the *BRS Report and Order* and the filing of the instant merger application. We see little evidence in the mobile market of a shift from the market environment that existed at the time of our decision in the *Cingular-AT&T Wireless* proceeding. Applicants maintain that the technical and operational characteristics of the 2.5 GHz band, including the spectrum isolation of the band, the lack of equipment or standards, and the band's inferior propagation characteristics, make it currently ill-suited for providing voice services. Joint Opposition to Petitions at 30. The record supports our view that BRS is more likely to be one of many inputs into a mobile market for data or broadband access that may have some characteristics of traditional voice service applications. See CFA/CU Reply at 4.

³³⁹ It is not entirely clear that NY3G Partnership has filed a petition to deny. See NY3G Petition to Deny. As an initial matter, NY3G Partnership has not complied with the statutory requirements for the filing of a petition to deny (continued....)

conclude that, at this time, claims that the merger will result in specific public interest benefits, while promising and encouraging, remain too speculative to deserve significant weight.

1. Potential Public Interest Harm

a. Mobile Data Services Market

152. In our effort to discern the potential competitive impact of the proposed merger with regard to the 2.5 GHz band, we first consider the impact that the proposed merger may have on the mobile data services product market,³⁴⁰ which would include mobile WIMS services as described by the Applicants.

153. Several petitioners and commenters raise concerns about the amount of 2.5GHz spectrum Sprint Nextel would control, both in local markets and in the aggregate, and its unique position as a provider with a national footprint in this band.³⁴¹ Alleged potential harms include: spectrum warehousing; delays in service launch; and a lack of service and competitive prices.³⁴² Petitioners claim that the problems associated with the size of Sprint Nextel's BRS holdings are exacerbated by a lack of available spectrum suited to compete with the merged entity's BRS holdings.³⁴³ Petitioners assert that these circumstances would result in few firms being able to prevent Applicants from exercising market power, creating a high risk of unilateral effects.³⁴⁴ Based on their position that Sprint Nextel would hold too much spectrum in given markets and that the formation of a national BRS provider would give Sprint Nextel unchecked market power,³⁴⁵ petitioners contend that Commission consent to the merger should be

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because it has not attached an affidavit as required under Section 309(d) of the Communications Act. See 47 U.S.C. 309(d). Also, NY3G Partnership argues that, if the Commission otherwise finds the proposed merger is in the public interest, the Commission should impose roaming conditions. NY3G Petition to Deny at 4. It does not appear to argue that the proposed merger should be denied because it will lead to anticompetitive effects with respect to roaming. *Id.* at 4-8. In any event, to the extent NY3G Partnership's filing can be considered a petition to deny, we reject it as not raising substantial and material questions of fact for the reasons set forth in this Section.

³⁴⁰ Mobile data service is considered to be the delivery of non-voice information to a mobile device. Two-way mobile data services include the ability not only to receive non-voice information on an end-user device, but also to send it from an end-user device to another mobile or landline device using wireless technology. Data services available today include, but are not limited to, short messaging service, email, and access to the internet. See *Ninth Competition Report*, 19 FCC Rcd at 20612 ¶ 33.

³⁴¹ We believe this issue is properly considered in the context of the mobile data services market because most of the parties' discussions refer to mobile services. To the extent the parties argue that the Applicants will hold too much spectrum independent of the product market, we summarily reject that argument. There is no spectrum cap applicable to BRS, and it is impossible to make a finding of competitive harm without reference to a product market.

³⁴² CTCNet Pet. at 4, 7; CU/CFA Pet. at 8; NRTC at 1-3; NY3G Reply at 3-4. More specifically, CTCNet contends that the Applicants would be in a position to use their market power to effectively deny any competitor access to any significant amount of the 2.5 GHz spectrum in 62 percent of the top 50 markets and any access whatsoever in seven of those markets. CTCNet Pet. at 15-16; see also CFA/CU Pet. at 8; NY3G Reply at 3. CTCNet and NY3G argue that the merger would create a dominant carrier with a national footprint in the 2.5 GHz band, which will wield disproportionate market power due to the mobile nature of BRS and customer demand for services with nationwide interoperability. CTCNet Pet. at 18; NY3G Pet. at 3.

³⁴³ CTCNet at 14-15; CTCNet Reply at 31-35.

³⁴⁴ CFA/CU at 8; Preferred Petition at 14.

³⁴⁵ CTCNet Reply at 4-7; NY3G Reply at 13-14.

conditioned by imposing various measures – including spectrum divestiture,³⁴⁶ spectrum caps,³⁴⁷ specific roaming requirements,³⁴⁸ porting requirements for local markets,³⁴⁹ and other requirements – on the merged entity.³⁵⁰ For a combination of reinforcing reasons we find the alleged potential harms unlikely and the proposed remedies unnecessary.

154. According to the Applicants, the majority of the 202 megahertz³⁵¹ of BRS/EBS spectrum in the 2.5 GHz band will remain available to rival competitors post-merger.³⁵² Further, Applicants argue that competitors will have access to nearly 300 megahertz of spectrum in other licensed bands that could be used to provide other innovative wireless services.³⁵³ Specifically, Applicants state that 130 megahertz of unassigned AWS spectrum will become available in the following bands with no limits on the total amount of spectrum licensees are permitted to hold: 90 megahertz at 1710-1755/2110-2155 MHz; 10 megahertz at 1915-1920/1995-200 MHz; 10 megahertz at 2020-2025/2175-2180 MHz; and 20 megahertz of currently unpaired spectrum at 2155-2175.³⁵⁴ Moreover, Applicants claim that additional spectrum is available for innovative wireless services including 78 megahertz of spectrum in the 700 MHz band and the portions of the 43 megahertz of Wireless Communications Services (WCS) spectrum to which Verizon Wireless and Cingular already have access.³⁵⁵

³⁴⁶ CFA/CU Pet. at 11; CTCNet at 21; CTCNet Reply at 37; NY3G at 8-9; Preferred Petition at 15-16. NY3G maintains that the asserted benefits of the proposed merger, absent conditions, do not outweigh the significant harms. NY3G Reply at 16.

³⁴⁷ CTCNet Pet. at 21; CFA/CU Pet. at 6, 11-12; NY3G Pet. at 8-9.

³⁴⁸ NY3G Reply at 7-8; United States Cellular Corporation (USCC) at 4; Southern LINC at 2.

³⁴⁹ NY3G Pet. at 6.

³⁵⁰ The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. (IMWED) also seeks conditions on the combined entity. IMWED asserts that it should not be able to hold EBS leases for longer than fifteen years and should be barred from having the option to purchase the EBS frequencies in the event that FCC rules are amended to allow such commercial purchases of EBS licenses. IMWED Comments at 6-7. In addition, IMWED argues that EBS licensees should have to file unredacted copies of leases they sign with Sprint-Nextel and any other commercial entities. *Id.* at 7. We note that IMWED has raised these arguments in a Petition for Reconsideration of the *BRS/EBS Order*, and argues that these conditions should apply to all EBS leases. *See* IMWED Petition for Reconsideration of the *BRS/EBS Order* at 9-10. We believe these arguments, which have an impact on all EBS leases and licensees, are more appropriately addressed in the context of the pending BRS/EBS proceeding and we will accordingly rule on those issues in the upcoming BRS/EBS Second Report and Order and Order on Reconsideration. Similarly, Community Technology Centers Network (CTCNet) has filed a Petition for Reconsideration regarding the assignment of a BRS license from Champion to Nextel Spectrum Acquisition Corp., a subsidiary of Nextel. The Petition was filed under both the file for that assignment (File No. 9650667) and in the instant merger proceeding. Additionally, CTCNet has filed a Consolidated Petition to deny an assignment that includes BRS authorizations from Digital and Wireless Television, LLC (DWT), to a subsidiary of Sprint. This petition was filed both with respect to the assignment by DWT, and in the instant merger proceeding. Because we believe the referenced Petitions are more appropriately dealt with in the context of the actual assignment proceedings, we will not rule on such Petitions in this proceeding, and will instead rule on those Petitions in the respective assignment proceedings.

³⁵¹ In the pre-transition band plan, BRS spectrum is located at 2150-2160 (2162 in certain markets) MHz and 2500-2690 MHz. *See* 47 C.F.R. § 27.5(i)(1).

³⁵² Joint Opposition to Petitions at 25.

³⁵³ *Id.* at 23.

³⁵⁴ *Id.* at 23-4.

³⁵⁵ *Id.* at 24.

155. Petitioners dispute the substitutability of alternative spectrum, claiming that broadband services in the 2.5 GHz band constitute a separate mobile, broadband data service. They argue that the alternative spectrum proposed by Sprint and Nextel is ill-suited for high-speed wireless multimedia service applications.³⁵⁶ Moreover, CTCNet and NY3G argue that the future spectrum offerings cited by Applicants will either be inappropriate for the provision of such services or unavailable in channel sizes that would allow a provider to compete with the Sprint Nextel holdings.³⁵⁷

156. We do not find petitioners' claims persuasive. We believe that the interconnected mobile data services market will remain competitive post-transaction and that significant competition will continue to grow from existing CMRS providers. The record reflects that significant amounts of spectrum currently exist or are expected to become available that will be conducive to the provision of competitive interconnected mobile data services. Furthermore, although the Commission has recognized that broadband may be offered in the 2.5 GHz band,³⁵⁸ we believe that it is premature to conclude which spectrum bands will support the services desired in this rapidly evolving market. What is clear, at this point in the development of these nascent services, is that there is meaningful competition among current mobile data service providers and that substantial opportunities exist for service providers to develop and offer even higher speed services over numerous spectrum blocks that will become available in the future. Thus, we believe that the mobile data market that BRS licensees and entities leasing EBS spectrum may enter is competitive.

157. Furthermore, we are not persuaded by petitioners' arguments that the 2.5 GHz band is intrinsically superior to other spectrum for the provision of wireless services.³⁵⁹ As Applicants acknowledge, while there is great promise for the development of broadband services in the 2.5 GHz band, and indeed, high-speed wireless Internet access services have already been deployed therein notwithstanding the current interleaved band plan,³⁶⁰ each spectrum band has its own advantages and disadvantages for the provision of services.³⁶¹ Finally, while we, at this time, are not certain as to the exact timing of availability of alternative spectrum, we anticipate that as the transition period for BRS/EBS expires, other "WIMS-capable" spectrum should become accessible to competitors. Therefore, we find that if the 2.5 GHz band is used for the provision of mobile data service, it will be one of many existing and potential inputs into the mobile data services market. Accordingly, we conclude that the proposed merger will not harm competition in the wireless interconnected mobile data services market.

158. We also conclude that the merger will not cause any competitive harm in the BRS band in any specific local market. Because the 2.5 GHz band holdings of the Applicants do not significantly overlap, the merger itself will generally not increase concentration in local markets. Applicants have

³⁵⁶ NY3G Reply 8-10.

³⁵⁷ CTCNet Reply at 31-35; NY3G Reply at 6-11.

³⁵⁸ *BRS/EBS R&O*, 19 FCC Rcd at 14165 ¶ 1.

³⁵⁹ See NY3G Reply at 6-7.

³⁶⁰ See Clearwire Corporation Comments at 1. Clearwire is operating high-speed wireless nomadic Internet access services for residential customers in several states using the 2.5 GHz band, and asserts that it has embarked on an aggressive roll out schedule and has plans to launch broadband systems in a number of additional markets in the coming months, utilizing the current interleaved band plan. *Id.* Similarly, Evertek, Inc. asserts it is providing broadband service to a number of rural customers using the 2.5 GHz band. See BRS Rural Advocacy Group and Central Texas Communications, Inc., Ex Parte Presentation to BRS/EBS proceeding, WT Docket No. 03-66, June 29, 2005.

³⁶¹ For example, while the 2.5 GHz band offers spectrum in larger blocks than some other bands, the propagation characteristics of the 2.5 GHz band are not as robust as those in lower frequency bands.

provided information concerning the areas and populations they currently cover in terms of MHz-Pops³⁶² both for spectrum licensed to the Applicants and for spectrum that they lease from other entities.³⁶³ In response to a request for further information from Commission staff, Applicants also provided their estimate of the average bandwidth available to them in each BTA, both before and after the merger.³⁶⁴ The vast majority of BRS holdings of Sprint and Nextel are complementary, *i.e.* they generally do not overlap.³⁶⁵ Thus, for most of the markets where the merged entity will hold BRS licenses, the merger itself will have little impact. Notably, in only seventeen BTAs will the merger result in a ten percentage point or more increase in MHz-Pops covered by the merged company (whether by license or lease) over and above the MHz-Pops currently covered by the company with the larger spectrum holding in the market.³⁶⁶ In only four of those seventeen BTAs (Lewiston-Moscow, Idaho, Bellingham, Washington, Oklahoma City, Oklahoma, and Danville, Illinois) will the merger result in an increase of over twenty percentage points in licensed and leased MHz-Pops.³⁶⁷ We note that these four markets are relatively small in population size and that the combined entity would not hold forty percent of the combined MHz-Pops licensed in these four markets.³⁶⁸ The merged entity would hold more than fifty percent of the leased holdings in only Bellingham (fifty-eight percent).³⁶⁹ Therefore, in these markets, there will remain substantial amounts of spectrum that will not be under the control of Applicants. Furthermore, if examined in terms of average bandwidth available to the Applicants (whether licensed or leased), the merger will result in an increase in only 65 of 493 BTAs, and in the majority of those BTAs, the increase would be by less than one megahertz.³⁷⁰ Accordingly, we conclude that requiring divestiture for spectrum in the 2.5 GHz band is not in the public interest.

159. Furthermore, we reject the argument that there will be competitive harm from the formation of one provider with a national footprint, as opposed to two providers with regional footprints.³⁷¹ Given the significant size of Sprint's and Nextel's respective current regional footprints in this band pre-merger, the petitioners have failed to identify any specific competitive harm that could be avoided by rejecting this merger and retaining these two large regional providers as separate entities.

³⁶² The number of "MHz-pops" is calculated by multiplying the population of the license service area by the amount of spectrum (in megahertz) authorized by the license. Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2672 (para. 80 n.159)(1995) (*Competitive Bidding Seventh Report and Order*).

³⁶³ Application, Attach. 1 to Attach. E.

³⁶⁴ See Nextel Response to Information Request No. 25.

³⁶⁵ Application Rowley Finch Decl. at 5-7.

³⁶⁶ Application, Attach. 1 to Attach. E.

³⁶⁷ *Id.* Twenty-eight percentage points is the highest incremental MHz-Pops increase for any market. We are not persuaded by assertions set forth by petitioners that the Applicants have not disclosed their lease holdings because Sprint Nextel attribute all licenses in MHz-Pops analysis. CTCN Reply at 16. We are also not persuaded by petitioner claims that the Applicants' data is unreliable based on the inclusion of EBS and white space. We agree with Applicants that the inclusion or exclusion of this spectrum does not have a significant effect on the overall analysis of the merged entity holding in the 2.5 GHz band. Joint Opposition to Petitions at 33-34, n.90. Unlicensed white space may become available in the future and EBS licensees routinely lease excess capacity. See *BRS/EBS R&O*, 19 FCC Rcd at 14226 ¶¶ 160-162.

³⁶⁸ Application Attach. 1 to Attach. E.

³⁶⁹ *Id.*

³⁷⁰ See Nextel Response to Information Request No. 25 at 3.

³⁷¹ CTCNet Reply at 6-8.

Further, based on the history of spectrum auctions and licensing in the 2.5 GHz band, we are not persuaded that rejecting the merger would ultimately result in the emergence of two national providers or two large providers that would more willingly negotiate with smaller providers than the single merged entity.³⁷² Even if petitioners had identified a competitive harm, it is not clear that not allowing the companies to merge would avoid that potential competitive harm.

160. Based on the record before us,³⁷³ and in light of our conclusion that this merger will not result in competitive harm in the 2.5 GHz band, we are not persuaded that spectrum divestitures are warranted regarding the Applicants' spectrum holdings in the band. Furthermore, we emphasize that divesting licensees of 2.5 GHz band spectrum would be inconsistent with the Commission's long-standing regulatory policies regarding the 2.5 GHz band, including the encouragement of consolidation of spectrum in this band, due to its historical underutilization. In fact, in establishing the procedures for the MDS auction, the Commission placed no restriction on the number of BTA service areas for which any entity could apply or on the number of BTA authorizations that could be awarded to one entity.³⁷⁴ To further encourage and facilitate the accumulation of a full complement of channels necessary for viable systems, the Commission also granted BTA auction winners a right of first refusal with regard to the leasing of EBS spectrum within their BTA. Specifically, the BTA holder was afforded the right to match all final offers of any proposed lessee for EBS spectrum in their BTA.³⁷⁵

161. Moreover, any divestiture action here would likewise contradict established Commission policy of furthering use of the 2.5 GHz band by educational licensees. Specifically, any divestiture of spectrum in this band could result in the termination of certain leases that Applicants have entered into with EBS licensees. Such termination of leases could significantly disrupt EBS operations. This is inconsistent with the Commission's long-established practice of structuring its rules to provide EBS licensees with flexibility to ensure that the very important educational mission it serves is not hampered.³⁷⁶ The Commission has repeatedly recognized that EBS provides critical educational services at a variety of locations where such instruction would generally be unavailable.³⁷⁷ Any disruption of such service could be greatly detrimental to the communities served by EBS.

162. Additionally, we believe that conditions proposed by petitioners, such as spectrum divestitures, spectrum caps, specific roaming requirements, and porting requirements would be premature, given the nascency of broadband uses and the on-going transition process in the 2.5 GHz band.³⁷⁸

³⁷² CTCNet Supplement to Reply at 4.

³⁷³ Many commenters contend that the merger is in the public interest and that it will not result in competitive harms. See, e.g., Intel at 3-4; Northern Virginia Technology Council USF at 1; Clarendon Foundation at 1; United Wireless Corp. at 1-2; Nex-Tech at 1; Pioneer Telephone Cooperative at 1; Telecommunications for the Deaf, Inc. (TDI) at 1; ViaNet Opposition to Petitions at 3-5.

³⁷⁴ See Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order*, 10 FCC Rcd 9589, 9609 ¶ 37 (1995) (*BTA Auction Order*).

³⁷⁵ *Id.* at 9621 ¶ 41.

³⁷⁶ See *BRS/EBS R&O*, 19 FCC Rcd at 14222 ¶ 150.

³⁷⁷ *Id.* at 14222-223 ¶ 52.

³⁷⁸ CTCNet argues that the Applicants' past record of usage of BRS spectrum is inadequate because only 28% of Nextel's commercial BRS authorizations are constructed. CTCNet Pet. at 20. Petitioner's argument only goes to further emphasize our point that, based on the widespread underutilization of spectrum in the 2.5 GHz band, significant steps are needed to encourage deployment of BRS, including ensuring that operators are able to provide service with as few regulatory encumbrances as possible. Further, we disagree with NY3G which asserts that the Commission has regulated nascent services. NY3G Reply at 11-12. In contrast, the Commission has demonstrated (continued....)

Notably, in the BRS/EBS proceeding, the Commission specifically raised the issue of whether restrictions were necessary for the 2.5 GHz band³⁷⁹ and determined, after a notice and comment period, that such limits were not in the public interest.³⁸⁰ Significantly, none of the petitioners who recommend conditions in this proceeding submitted such proposals in the rulemaking proceeding, which would have been the appropriate vehicle to thoroughly consider such requests.³⁸¹ While Petitioners counter that they had no notice in the BRS/EBS proceeding that one dominant carrier would emerge, both Sprint and Nextel held considerable regional footprints prior to the issuance of the *BRS/EBS R&O*.³⁸² Moreover, we have independently analyzed the record and concluded that competitive harm is unlikely.

163. Although we decline to impose the conditions recommended by petitioners detailed above, we note that as part of the Application, the Applicants have made a voluntary commitment to observe two service implementation milestones in the 2.5 GHz band, unless circumstances beyond their control prevent them from achieving these milestones.³⁸³ Applicants committed themselves to this restriction without regard to any finding that the merger of Sprint and Nextel would result in competitive harm in the mobile data services market or in the fixed broadband services market in the 2.5 GHz band. We condition our grant of the Application on Sprint Nextel's commitment to meet these milestones, described below.

164. First, within four years from the effective date of this Order, the merged company will offer service in the 2.5 GHz band to a population of no less than 15 million Americans. This deployment will include areas within a minimum of nine of the nation's most populous 100 BTAs and at least one BTA less populous than the nation's 200th most populous BTA. In these ten BTAs, the deployment will cover at least one-third of each BTA's population.

165. Second, within six years from the effective date of this Order, the merged company will offer service in the 2.5 GHz band to at least 15 million more Americans in areas within a minimum of nine additional BTAs in the 100 most populous BTAs, and at least one additional BTA less populous than the nation's 200th most populous BTA. In these additional ten BTAs, the deployment will cover at least one-third of each BTA's population. Accordingly, based on the four and six year commitments, within six years of the effective date of this Order applicants will offer service in the 2.5 GHz band to at least 30 million American in at least 20 BTAs, at least two of which are rural communities outside of the nation's top 200 most populous BTAs. The deployment in each of the twenty BTAs will cover at least one-third

(Continued from previous page)

a preference to allow broadband markets to develop with fewer levels of regulatory burden than traditional voice service. See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Notice of Proposed Rulemaking*, 16 FCC Rcd 22745, 22747 ¶4 (2001). Regardless, Commission precedent in regulating the 2.5 GHz band clearly guides use to permit a primary licensee in a given BTA.

³⁷⁹ *BRS/EBS NPRM*, 18 FCC Rcd at 6771 ¶ 117, 6776-77 ¶¶ 127-28, 6781-82 ¶ 142. We also note that in the BRS Order the Commission discussed proposals for substantial service standards to limit warehousing. *BRS/EBS R&O*, 19 FCC Rcd at 14285 ¶ 325.

³⁸⁰ *BRS/EBS R&O*, 19 FCC Rcd at 14216 ¶ 132, 14233-34 ¶¶ 179-181. No spectrum caps were imposed on licensees.

³⁸¹ *Comcast AT&T Order*, 17 FCC Rcd at 23246 ¶ 30 (issues related to industry-wide trends are more appropriately considered in rulemaking proceedings, rather than in our merger review processes).

³⁸² CTCNet Reply at 9.

³⁸³ See *Ex parte* Letter from Lawrence R. Krevor, Vice President, Government Affairs, Nextel Communications Inc. and Vonya B. McCann, Senior Vice President, Federal External Affairs, Sprint Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission (August 2, 2005)(Applicant's Buildout Commitment Letter).

of each BTA's population.

166. We note that, while the service implementation milestones set forth above apply to the Applicants in the context of this proceeding, the issue of what performance requirements should apply to licensees generally in the 2.5 GHz band is the subject of a pending rulemaking.³⁸⁴ Applicants will be subject to any performance requirements adopted by the Commission in that rulemaking, in addition to those set forth above.

b. Fixed Broadband Services Market

167. We next consider whether the merger will harm competition for last-mile, fixed broadband services. We define the fixed broadband services market as the market for fixed advanced telecommunications capability, *i.e.*, "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications capability using any technology."³⁸⁵ Although we are uncertain as to the exact nature of services that will be provided in the 2.5 GHz band post-transition, we expect that this spectrum may be used to provide fixed or portable wireless broadband services (*e.g.*, Wi-Max type services) that will provide alternative service platforms for last mile services to residences and businesses. Operators providing such services will likely compete with digital subscriber line (DSL) and cable modem service providers that already hold significant market share.³⁸⁶ Although, as petitioners argue, broadband services in the 2.5 GHz band will likely be different from DSL and cable modems in that it will be portable, this moderate differentiation does not undermine the substitutability of these products or the definition of a fixed broadband wireless market. Whereas operators in the 2.5 GHz band may be able to offer more portability than DSL or cable modem services, operators offering DSL or cable modem services will have "first mover" advantages such as a substantial customer base and established brands. We also note that WiFi and other services are, and will continue to be, available to DSL and cable modem subscribers to provide them with some of the portability characteristics that can be expected with the 2.5 GHz band. As a result of the entry of another competitor in this market, we expect that consumers will benefit from innovative services and lower prices. The Commission has noted that in the future, there will be a wide variety of technologies that will be available to provide broadband services to consumers and businesses, including fiber, broadband over power line, unlicensed wireless technologies, and satellite.³⁸⁷ Accordingly, we conclude that, to the extent that uses of the 2.5 GHz band evolve into a fixed broadband service, it will be just one of several broadband services and that no competitive harm is likely to result from the merger in this product market.

2. Potential Public Interest Benefits

168. Because we conclude that any public benefits of this merger on the commercial development of the 2.5 GHz band are too speculative to assess at this time, we do not factor into our analysis any public interest benefits with regard to the 2.5 GHz band. We are unable on this record to give substantial weight to the Applicants' assertion that the merger will produce significant efficiencies in improved development of services in the 2.5 GHz band.³⁸⁸ Applicants contend that the merger will

³⁸⁴ See *BRS/EBS R&O & FNPRM*.

³⁸⁵ See 47 U.S.C. § 706; Availability of Advanced Telecommunications Capability in the United States, *Fourth Report to Congress*, 19 FCC Rcd 20540, 20551 (2004) ("Section 706 Fourth Annual Report to Congress").04-208 (rel. Sep. 9, 2004) at 12.

³⁸⁶ See Intel Comments at 4. See also Federal Communications Commission Releases Data on High-Speed Services, December 22, 2004 (announcing continued growth in broadband services for July 2004 reporting period).

³⁸⁷ *Section 706 Fourth Annual Report to Congress*, 19 FCC Rcd at 20553-20562, 20583.

³⁸⁸ Application, Public Interest Statement at 32.

accelerate the deployment of WIMS in this band.³⁸⁹ Specifically, they indicate that they are well-positioned to meet the challenges of developing WIMS because of the amount of spectrum they license or lease in the 2.5 GHz band, their experience in developing new services, their existing portfolio of wireless products, and their financial strength.³⁹⁰ The Applicants further assert that the merger would provide them a national footprint in the 2.5 GHz band, which would justify the research, development, and operational costs required to make use of the band.³⁹¹ A national footprint would also allow the Applicants to develop and deploy a common technology over a portion of the 2.5 GHz band that will provide customers with the same services in most areas of the country.³⁹² Applicants indicate that their goal is to provide customers with integrated wireless solutions by incorporating devices, applications, and smart network technologies into an intuitive, easy-to-use service.³⁹³ The Applicants assert that this new service will generate economic growth and jobs in the U.S. by propelling the development of innovative applications and services.³⁹⁴

169. Although the Commission has previously noted the consumer benefits that flow from expanded footprints for nationwide carriers, including the provision of enhanced services and/or lower prices to consumers across the country, we decline to attribute specific public interest benefits to the merger related to spectrum holdings in the 2.5 GHz band. The Applicants describe WIMS as their “currently envisioned” plans for the 2.5 GHz band.³⁹⁵ They also admit that technology is evolving and key standard-setting processes are underway.³⁹⁶ We agree that if the merger were to facilitate the national development of WIMS-type services, the ensuing opportunity for consumers to enjoy a new broadband service would amount to a significant public interest benefit. In the absence of concrete plans for the actual development and deployment of WIMS, however, any attribution of public interest benefits from this merger as it relates to the 2.5 GHz band would be theoretical and speculative. As CTC-Net notes, the parties have not set forth any concrete plans to rapidly deploy service in the band.³⁹⁷ Furthermore, we find it significant that the Applicants have not attempted to quantify the benefits of the proposed merger as it relates to the 2.5 GHz band. In light of these factors, we conclude that any public benefits of this merger on the commercial development of the 2.5 GHz band are too speculative to assess at this time. Although we are encouraged by Applicants’ commitment to specific milestones regarding deployment, and make that commitment enforceable as part of this order, the caveats on that commitment reflect the uncertainties that make the anticipated benefits too contingent to receive significant weight in our analysis. Therefore, we do not factor into our analysis public interest benefits with regard to the 2.5 GHz band.

³⁸⁹ *Id.* at 42.

³⁹⁰ *Id.*

³⁹¹ Rowley-Finch Decl. at 8.

³⁹² *Id.*

³⁹³ Application, Public Interest Statement at 43.

³⁹⁴ *Id.* Several commenters agree with Applicants that the merger would result in public interest benefits. *See* Private Networks, Inc. at 1; Clarendon Foundation at 2; Intel Corporation at 1; SpeedNet, L.L.C. at 1; Communications Group of the University of Arizona at 1; University of South Florida at 1-2; Via/Net Companies at 1, 5.

³⁹⁵ Rowley-Finch Decl. at 3.

³⁹⁶ Rowley-Finch Decl. at 13.

³⁹⁷ CTC-Net Further Comments at 5.

C. Other Issues

1. Petitions to Deny Based on the 800 MHz Rebanding Proceeding

170. In this section, we address petitions to deny filed by SMR licensees who believe that the proposed merger will exacerbate the alleged competitive advantage Nextel gained as a result of the Commission's 800 MHz Rebanding Proceeding.³⁹⁸ We reject these petitions to deny because the proposed merger did not create these alleged harms. Nor are we persuaded that the proposed merger would exacerbate the alleged harms.

171. In July 2004, the Commission adopted the *800 MHz Report and Order* to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band.³⁹⁹ The Commission's plan was comprised of short-term and long-term components. The short-term component consisted of technical standards that defined unacceptable interference in the 800 MHz band and procedures to abate this interference.⁴⁰⁰ The long-term component reconfigured the 800 MHz band to separate generally incompatible technologies: cellular-architecture multi-cell systems used by cellular telephone and Enhanced Specialized Mobile Radio (ESMR) licensees and "high site" systems used by public safety, private wireless, and non-cellular SMR licensees.⁴⁰¹ This reconfiguration will consolidate ESMR systems into a single continuous segment in the upper portion of the 800 MHz band (the ESMR Band).⁴⁰²

172. The Commission also required Nextel to return all of its 800 MHz spectrum below 817/862 MHz as well as all of its existing authorizations in the 700 MHz band. Nextel was also required to pay for the cost of retuning all 800 MHz band public safety systems and other private wireless 800 MHz band incumbents to their new spectrum assignments. In return for accepting these obligations, the Commission modified certain Nextel licenses to provide Nextel a nationwide authority to operate in ten megahertz of contiguous spectrum at 1910-1915/1990-1995 MHz.⁴⁰³ In December 2004, the Commission issued the *Supplemental Order* that clarified and revised the reconfiguration plan.⁴⁰⁴

173. A number of SMR licensees filed petitions for reconsideration of the *800 MHz Order* and the *Supplemental Order*. The SAFE Coalition, Coastal SMR, Scott MacIntyre, and Preferred Communications claimed that the Commission improperly: (a) eliminated the ability of incumbent SMR high-site licensees to convert their systems to ESMR architecture; and (b) denied licensees the right to relocate site-based licenses to the ESMR band.⁴⁰⁵ Coastal SMR Network, Duncan, and Preferred also contended that the Commission abused its discretion by authorizing Nextel to operate spectrum in the 1.9 GHz band,⁴⁰⁶ arguing that under Commission precedent, the Commission could only assign the 1.9 GHz

³⁹⁸ See *800 MHz Report and Order*, *supra* note 10, *Supplemental Order*, *supra* note 44.

³⁹⁹ See *800 MHz Report and Order*, 19 FCC Rcd 14969.

⁴⁰⁰ *Id.* at 14973 ¶ 3, 15021-15045 ¶ 88-141.

⁴⁰¹ *Id.* at 15045-15079 ¶¶ 142-207.

⁴⁰² *Id.* at 15046 ¶¶ 144-145.

⁴⁰³ *Id.* at 14978 ¶ 12, 15080-15085 ¶¶ 210-222.

⁴⁰⁴ See *Supplemental Order*, 19 FCC Rcd 25120.

⁴⁰⁵ See WT Docket No. 02-55 (Preferred Petition for Reconsideration of 800 MHz Order at 2-3, 12-28; SAFE Coalition Petition for Partial Reconsideration of Supplemental Order at 3-4; Coastal SMR and Scott MacIntyre Joint Petition for Partial Reconsideration of 800 MHz Order at 7-9).

⁴⁰⁶ See WT Docket No. 02-55 (Preferred Petition for Reconsideration of 800 MHz Order at 5, 42-45; Coastal SMR and Scott MacIntyre Joint Petition for Partial Reconsideration of 800 MHz Order at 12-15, 17; Duncan Petition for Reconsideration of 800 MHz Order at 5-9).

spectrum outside the auction process if the Commission made the spectrum available to all EA licensees.⁴⁰⁷

174. Some of these same parties have also filed petitions to deny the license transfer application in this proceeding, reiterating their objections to the *800 MHz Order* and *Supplemental Order*,⁴⁰⁸ and further arguing that the proposed merger would increase the magnitude of the harm caused by the 800 MHz rebanding process and the determination to grant nationwide licenses to Nextel.⁴⁰⁹ For example, the SAFE Coalition contends that regional SMR licensees that provide unbundled dispatch services to small businesses compete with Nextel for these customers⁴¹⁰ and the Commission should consider this market for unbundled dispatch services a separate product market.⁴¹¹ According to the SAFE Coalition, Nextel dominates the spectral resources in the upper portion of the 800 MHz band, and the *800 MHz Order* and *Supplemental Order* unfairly impedes other SMR licensees from migrating their EA and site-based licenses to the upper portion of the 800 MHz band. The SAFE Coalition, therefore, argues that the merger with Sprint will lead to greater competitive imbalance in the market for unbundled dispatch services.⁴¹²

175. Preferred argues that the proposed merger would harm competition because it would reduce the number of nationwide mobile telephony providers from five to four, and because the merged entity would have significant holdings in the 2.5 GHz band as well as the competitive advantages that the Commission gave Nextel in the *800 MHz* and *Supplemental Order*.⁴¹³ According to Preferred, the Commission should either deny the license transfer application or impose conditions that would require the merged entity to divest spectrum in the 800 MHz and 1.9 GHz bands.⁴¹⁴

176. Duncan asserts that the Commission decision to award Nextel ten megahertz of spectrum in the 1.9 GHz band was “[fundamental[ly]]” premised upon the Commission’s understanding that this spectrum was needed “to enable Nextel to migrate its iDEN technology to a frequency band where it would eliminate the interference” Nextel has caused to public safety communications.⁴¹⁵ According to Duncan, the Commission never envisioned that Nextel would “flip” this spectrum to an existing nationwide PCS licensee before completing any of the proposed relocations.⁴¹⁶ Therefore, Duncan argues that the Commission should defer approval of the transfer of control applications until it reconsiders the 800 MHz reconfiguration plan in light of the spectrum allocation implications of the proposed Sprint Nextel merger.⁴¹⁷

177. We deny these petitions. The harms SAFE Coalition and Preferred Communications allege were caused by the Commission’s *800 MHz Order* and *Supplemental Order* predate Sprint and

⁴⁰⁷ See WT Docket No. 02-55 (Coastal SMR and Scott MacIntyre Joint Petition for Partial Reconsideration of 800 MHz Order at 12-15, 17).

⁴⁰⁸ See Preferred Petition to Deny at 9; SAFE Coalition Petition to Deny at 5-9.

⁴⁰⁹ See, e.g., SAFE Coalition Petition to Deny at 8 & n.16.

⁴¹⁰ *Id.* at 5-7.

⁴¹¹ *Id.* at 5-6.

⁴¹² *Id.* at 5-9.

⁴¹³ Preferred Petition to Deny at 3, 9, 11-13; Preferred Reply at 3, 8.

⁴¹⁴ Preferred Petition to Deny at 2, 10, 15, 16; Preferred Reply at 6-8.

⁴¹⁵ See Duncan Petition to Deny at 3.

⁴¹⁶ See *id.* at 4.

⁴¹⁷ See *id.* at 5, 7-9.

Nextel's license transfer application. The Commission will address the arguments about these alleged harms in an order resolving the petitions for reconsideration of the *800 MHz Order* and *Supplemental Order*.⁴¹⁸

178. We also find no merit to Duncan's contention that the Commission needs to reconsider the 800 MHz reconfiguration plan before granting consent to the proposed transfer of licenses because the Commission's reconfiguration plan was premised on its understanding that Nextel needed ten megahertz of spectrum to migrate its iDEN network to the 1.9 GHz band.⁴¹⁹ Nothing in the *800 MHz Order* or the *Supplemental Order* supports Duncan's assertion that the reconfiguration plan was fundamentally based on Nextel migrating its iDEN network to the 1.9 GHz band. In support of this assertion, Duncan quotes from a section in the Commission's *800 MHz Order* in which the Commission was explaining that it was "redesignating five megahertz of spectrum in the 1910-1915 MHz band for licensed Fixed and Mobile services" because this redesignation "should promote efficient use of the spectrum, [and] allow for the rapid introduction of high-value services."⁴²⁰ The Applicants have stated that they intend to deploy advanced wireless services in the 1.9 GHz band⁴²¹ and we have found this to be one of the potential public interest benefits of the merger.⁴²² Consequently, approving the proposed merger is wholly consistent with the Commission's purpose in redesignating the five megahertz of spectrum in the 1910-1915 MHz band. We further note that the Applicants have stated that, if the merger is approved, they intend to move expeditiously to implement the Commission's reconfiguration plan.⁴²³

179. Nor are we persuaded by the SAFE Coalition's argument that the proposed merger between Sprint and Nextel would lead to competitive harm in a separate market for unbundled dispatch services. Even if we were to accept the SAFE Coalition's view that there is a separate unbundled dispatch service market, Sprint is not a competitor in the unbundled dispatch services market, as SAFE Coalition admits.⁴²⁴ Therefore, the proposed merger between Sprint and Nextel would not increase the magnitude of that alleged harm. For the foregoing reasons, we conclude that the petitions to deny of SAFE Coalition, Duncan, and Preferred do not raise substantial and material questions of fact.

2. Sprint Contractual Dispute With US Unwired

180. Sprint's wireless footprint has been expanded through relationships with independent PCS "affiliates," typically in smaller markets.⁴²⁵ One of these affiliates, US Unwired,⁴²⁶ claims that in exchange for its agreement (made through subsidiaries) to construct, manage, and operate portions of the Sprint PCS wireless network, US Unwired was given exclusive rights to operate the Sprint PCS wireless network in certain geographic areas. US Unwired alleges that approval of the proposed merger would violate its exclusive rights and that the public interest would be disserved because Sprint would be forced

⁴¹⁸ In our analysis of competition in the mobile telephony and the 2.5 GHz band, we address Preferred's concerns about consolidation and explain why the proposed merger would not lead to anticompetitive effects. See *supra* Sections V.A. and V.B.1.a.

⁴¹⁹ Duncan Petition to Deny at 3.

⁴²⁰ *800 MHz Report and Order*, 19 FCC Rcd 15804 ¶ 227-228.

⁴²¹ See Application, Public Interest Statement at 23, 25-27.

⁴²² See *supra* Section V.A.7.

⁴²³ See Application, Public Interest Statement at 63.

⁴²⁴ SAFE Coalition Petition to Deny at 6.

⁴²⁵ Application, Public Interest Statement at 16-18. Generally, such affiliates construct PCS networks and provide service over licenses held and controlled by Sprint, and Sprint does not have ownership interest in these affiliates.

⁴²⁶ US Unwired Inc. Informal Request for Commission Action (June 2, 2005).

to discontinue service to those customers after the merger is completed. In reply, Sprint claims that US Unwired's request constitutes a private contractual matter and should be denied.⁴²⁷

181. We agree that US Unwired's request is a private contractual dispute that is not relevant to our public interest analysis and is best resolved by the parties, or in courts of competent jurisdiction.⁴²⁸ Accordingly, US Unwired's request is denied.

3. CWA's Petition to Impose Conditions

182. Commenters suggest that, to the extent that our benefits analysis is predicated on the spin-off of Sprint's Local Division, we must also consider any potential harms to Sprint's wireline consumers that might result from the spin-off,⁴²⁹ and that the merger must be conditioned upon the approval of the Applicants' commitment to a "fair and equitable allocation" of corporate assets and debt at the time of the separation of the Sprint's Local Division, which is Sprint's local exchange business.⁴³⁰

183. Even though our benefits analysis in this transaction is not dependent on the announced future spin-off of Sprint's Local Division, we note that Sprint and Nextel have submitted a letter in this proceeding specifically addressing CWA's comments.⁴³¹ Gary D. Forsee, Sprint's Chairman and CEO, and Timothy M. Donahue, Nextel's President and CEO, submitted a letter to the Commission on August 2, 2005, stating that the new local company, LTD Holding Company, "will receive an equitable debt and asset allocation at the time of its proposed spin-off so that the company will be a financially secure, Fortune 500 company."⁴³² They state that "[i]ts stock is expected to be traded on the New York Stock Exchange; and it anticipates having a level of equity, debt and other financial characteristics consistent with those of companies that have been rated 'investment grade' by major ratings agencies."⁴³³ Furthermore, Mr. Forsee and Mr. Donahue state that, as part of the state commission approval process for this spin-off and resulting change of control of its local telephone operations, Sprint Nextel "will

⁴²⁷ Sprint Reply to Informal Request at 1 (June 10, 2005).

⁴²⁸ See Applications of Vodafone Airtouch, PLC and Bell Atlantic Corp., Order on Further Reconsideration, 17 FCC Rcd 10998, 11000 ¶ 6 (WTB 2002), *reconsideration dismissed* 18 FCC Rcd 1861 (WTB 2003), *review denied in part, dismissed in part* 20 FCC Rcd 6439 (2005). See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 n.222 (citing Vodafone AirTouch, PLC, and Bell Atlantic Corp., *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16511-12 ¶ 12 (WTB, IB 2000) ("*Bell Atlantic-Vodaphone Order*") and Applications of Centel Corp. and Sprint Corp., *Memorandum Opinion and Order*, 8 FCC Rcd 1829, 1831 ¶ 10 (CCB 1993)). The Commission has refused to interject itself into private matters, finding that a court, and not the Commission, is the proper forum to resolve such disputes. *Bell Atlantic-Vodaphone Order*, 15 FCC Rcd at 16514 n.37 (citing Applications of WorldCom and MCI Communications Corp., *Memorandum Opinion and Order*, 13 FCC Rcd 18025, 18148 ¶ 214 (1998); PCS 2000, L.P., 12 FCC Rcd 1681, 1691 ¶ 93 (1997)). We note that since US Unwired filed its informal request in this proceeding, it has been reported that Sprint has agreed to acquire US Unwired. *Sprint to Buy US Unwired Affiliate*, *Wall St. J.*, July 12, 2005, at B3. It is further reported that among other matters, as part of that agreement, Sprint and US Unwired would seek a stay of certain court litigation between those two parties. *Id.*

⁴²⁹ CWA Petition at 2, 4-5; see also New Jersey Ratepayer Reply 6-7.

⁴³⁰ CWA Petition at 6-9.

⁴³¹ Letter from Gary D. Forsee, Chairman and CEO, Sprint Corp., and Timothy M. Donahue, President and CEO, Nextel Communications, Inc., to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-63 (filed Aug. 2, 2005).

⁴³² *Id.* at 1.

⁴³³ *Id.* Sprint and Nextel note that the planned spin-off of Sprint's local telephone operations will be the largest independent local exchange carrier in the nation, with 2004 annual revenues exceeding \$6 billion, and serving more than 7.5 million switched access lines in 18 states as of the end of June 2005.

demonstrate that the New Local Company will possess the requisite financial strength, in addition to managerial and technical capability, to fully perform its public service obligations.⁴³⁴ We find that these statements represent commitments by Sprint Nextel that the new local wireline company, LTD Holding Company, will receive an equitable debt and asset allocation at the time of its proposed spin-off so that the company will be a financially secure, Fortune 500 company, and that Sprint Nextel will demonstrate that the new local company will possess the requisite financial strength, in addition to managerial and technical capability, to fully perform its public service obligations. In addition, these statements are presumably made in accordance with the Commission's requirements of candor and truthfulness,⁴³⁵ and, for this reason, we award them substantial weight.

VI. CONCLUSION

184. As discussed above, we find that public interest harm is unlikely as a result of this transaction, primarily because of the presence of multiple other carriers who have the ability to act as effective competitive constraints on the behavior of the merged entity. Therefore, while the structure of markets will change as a result of the transaction, we find that carrier conduct will remain sufficiently competitive to ensure that market performance will not be impaired, and, given the expected benefits, the public interest will be enhanced on balance.

185. We emphasize that our judgment in this matter does not mean that our analysis would be the same if additional consolidation in this sector were to be proposed in the future. Clearly, there is a point beyond which further consolidation would not be in the public interest. As we have here, when reviewing any future applications of this nature we will look closely at the competitive circumstances pertaining at that time in the affected markets and will make a considered judgment based on careful weighing of all the relevant circumstances.

VII. ORDERING CLAUSES

186. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the applications for the transfer of control of licenses and authorizations as discussed herein from Nextel to Sprint ARE GRANTED, to the extent specified in this order and subject to the condition specified below.

187. IT IS FURTHER ORDERED that, pursuant to section 1.9030 of the Commission's rules, 47 C.F.R. § 1.9030, the application for the transfer of control of de facto transfer lease authorizations from Nextel to S-N Merger Corporation is GRANTED, to the extent specified in this order and subject to the conditions specified below.

188. IT IS FURTHER ORDERED that the above grant shall include authority for Sprint to acquire control of: (a) any license or authorization issued to Nextel and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

189. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.24 of the Commission's rules, 47, C.F.R. § 63.24, the application to transfer control of Nextel's international Section 214 authorization to Sprint IS GRANTED subject to the conditions applicable to international section 214 authorizations.

⁴³⁴ *Id.* at 2 n.2.

⁴³⁵ See 47 CFR § 1.17.

190. IT IS FURTHER ORDERED that, with respect to roaming, Sprint may not prevent its customers from completing calls in the manner contemplated by 47 C.F.R. § 20.12(c), unless specifically requested to do so by a subscriber.

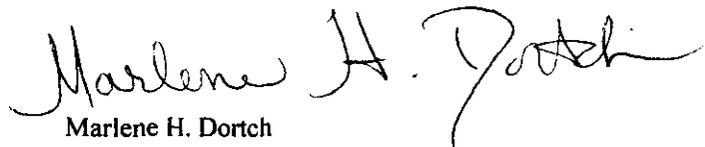
191. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from Nextel to Sprint filed by New Jersey Division of the Ratepayer Advocate; Richard W. Duncan d/b/a Anderson Communications; Consumer Federation of America and Consumers Union; Safety and Frequency Equity Competition Coalition; Community Technology Centers' Network; Preferred Communications Systems Inc.; and NY3G Partnership ARE DENIED for the reasons stated herein.

192. IT IS FURTHER ORDERED that the grant of the transfer of control of licenses from Nextel to Sprint in the 2150-2162 MHz band and the 2500-2690 MHz band is conditioned on Sprint Nextel's commitment to meet two service milestones contained in the Buildout Commitment Letter filed by Sprint and Nextel on August 2, 2005, unless circumstances beyond their control prevent them from achieving these milestones.

193. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Informal Request for Commission Action filed by US Unwired Inc. IS DENIED for the reasons stated herein.

194. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

**APPENDIX A
LIST OF COMMENTERS****Comments Filed by:**

1. American Council of the Blind (Melanie Brunson)
2. Clarendon Foundation
3. Clearwire Corporation
4. Communication Service for the Deaf (CSD)
5. Communications Workers of America
6. Community Technology Centers' Network (CTCNet)
7. Consumer Federation of America
8. Consumers Union
9. Easter Seals
10. Fraternal Order of Police
11. Friends University
12. Greater Washington Board of Trade
13. Horizons for the Blind
14. Intel Corporation
15. ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.
16. KCPT- Public Television
17. Manatee Community College
18. National Association of the Deaf
19. National Black Chamber of Commerce
20. National Emergency Number Association (NENA)
21. National Puerto Rican Coalition, Inc. (NPRC)
22. National Rural Telecommunications Cooperative
23. National Urban League
24. New Jersey Division of Ratepayer Advocate
25. Nex-Tech Wireless, LLC
26. Northern California Center on Deafness (NorCal)
27. Northern Virginia Technology Council (NVTC)
28. NY3G Partnership (NY3G)
29. Pioneer Telephone Cooperative, Inc.
30. Poudre School District (Judy S. MacDonald)
31. Private Networks, Inc.
32. Rural Cellular Association
33. Self Help for Hard of Hearing People (SHHH)
34. SouthernLINC Wireless
35. SpeedNet, L.L.C.
36. Sprint Corporation
37. Ted Roblick
38. Telecommunication for the Deaf

39. United South and Eastern Tribes, Inc. (USET)
40. United States Cellular Corporation
41. United States Hispanic Chamber of Commerce
42. United Wireless Corporation (a unit of United Telephone and Communications Associations, Inc.)
43. University of Arizona KUAT Communications Group
44. University of South Florida
45. U.S. Senator Mike Dewine
46. U.S. Senator Herbert Kohl
47. US Unwired Inc.
48. Via/Net Companies, Inc.

Reply Comments Filed by:

1. Communications Workers of American (CWA) and International Brotherhood of Electrical Workers (IBEW)
2. Via/Net Companies, Inc.

Petitions to Deny Filed by:

1. Community Technology Centers' Network (CTCNet)
2. Consumer Federation of America and Consumers Union
3. New Jersey Division of Ratepayer Advocate
4. NY3G Partnership
5. Preferred Communications Systems, Inc.
6. Richard W. Duncan d/b/a Anderson Communications
7. Safety and Frequency Equity (SAFE) Competition Coalition

Joint Opposition to Petitions to Deny Filed by:

Sprint Corporation and Nextel Communications, Inc.

Reply to Joint Opposition to Petitions to Deny Filed by:

1. Community Technology Centers' Network (CTCNet)
2. Consumer Federation of America and Consumers Union
3. NY3G Partnership
4. Preferred Communications Systems, Inc.
5. Richard W. Duncan d/b/a Anderson Communications
6. Safety and Frequency Equity (SAFE) Competition Coalition
7. SouthernLINC Wireless
8. United States Cellular Corporation

APPENDIX B

LIST OF MARKETS IDENTIFIED FOR FURTHER ANALYSIS BY INITIAL SCREEN

CEAs:

CEA	Name
CEA0160	Albany-Schenectady-Troy, NY
CEA0240	Allentown-Bethlehem-Easton, PA
CEA0440	Ann Arbor, MI
CEA0560	Atlantic-Cape May, NJ
CEA0640	Austin-San Marcos, TX
CEA0680	Bakersfield, CA
CEA0720	Baltimore, MD
CEA0743	Barnstable-Yarmouth, MA
CEA0760	Baton Rouge, LA-MS
CEA0840	Beaumont-Port Arthur, TX
CEA0860	Bellingham, WA
CEA0870	Benton Harbor, MI
CEA0875	Bergen-Passaic, NJ
CEA0960	Binghamton, NY-PA
CEA1040	Bloomington-Normal, IL
CEA1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-R
CEA1145	Brazoria, TX
CEA1240	Brownsville-Harlingen-San Benito, TX
CEA1400	Champaign-Urbana, IL
CEA1520	Charlotte-Gastonia-Rock Hill, NC-SC
CEA1540	Charlottesville, VA
CEA1600	Chicago, IL
CEA1620	Chico-Paradise, CA
CEA1640	Cincinnati, OH-KY-IN
CEA1840	Columbus, OH
CEA1880	Corpus Christi, TX
CEA1920	Dallas, TX-OK
CEA2000	Dayton-Springfield, OH
CEA2020	Daytona Beach, FL
CEA2160	Detroit, MI
CEA2190	Dover, DE
CEA2281	Dutchess County, NY
CEA2320	El Paso, TX
CEA2330	Elkhart-Goshen, IN-MI
CEA2640	Flint, MI
CEA2680	Fort Lauderdale, FL
CEA2700	Fort Myers-Cape Coral, FL
CEA2710	Fort Pierce-Port St. Lucie, FL
CEA2760	Fort Wayne, IN
CEA2800	Fort Worth-Arlington, TX
CEA2840	Fresno, CA
CEA2900	Gainesville, FL
CEA2960	Gary, IN
CEA3000	Grand Rapids-Muskegon-Holland, MI

CEA3180	Hagerstown, MD-PA
CEA3200	Hamilton-Middletown, OH
CEA3283	Hartford-New Britain-Middletown-Bristol, CT
CEA3320	Honolulu, HI
CEA3350	Houma, LA
CEA3360	Houston, TX
CEA3400	Huntington-Ashland, WV-KY-OH
CEA3480	Indianapolis, IN
CEA3500	Iowa City, IA
CEA3520	Jackson, MI
CEA3600	Jacksonville, FL-GA
CEA3720	Kalamazoo-Battle Creek, MI
CEA3760	Kansas City, MO-KS
CEA3800	Kenosha, WI
CEA3810	Killeen-Temple, TX
CEA3880	Lafayette, LA
CEA3920	Lafayette, IN
CEA3960	Lake Charles, LA
CEA3980	Lakeland-Winter Haven, FL
CEA4040	Lansing-East Lansing, MI
CEA4080	Laredo, TX
CEA4120	Las Vegas, NV-AZ-UT
CEA4480	Los Angeles-Long Beach, CA
CEA4520	Louisville, KY-IN
CEA4600	Lubbock, TX
CEA4800	Mansfield, OH
CEA4880	McAllen-Edinburg-Mission, TX
CEA4900	Melbourne-Titusville-Palm Bay, FL
CEA5000	Miami, FL
CEA5190	Monmouth-Ocean, NJ
CEA5330	Myrtle Beach, SC
CEA5345	Naples, FL
CEA5380	Nassau-Suffolk, NY
CEA5483	New Haven-Bridgeport-Stamford-Danbury-Waterbury, C
CEA5523	New London-Norwich, CT
CEA5560	New Orleans, LA-MS
CEA5600	New York, NY
CEA5640	Newark, NJ-PA
CEA5660	Newburgh, NY-PA
CEA5775	Oakland, CA
CEA5790	Ocala, FL
CEA5945	Orange County, CA
CEA5960	Orlando, FL
CEA6015	Panama City, FL
CEA6080	Pensacola, FL
CEA6120	Peoria-Pekin, IL
CEA6160	Philadelphia, PA-NJ
CEA6483	Providence-Warwick-Pawtucket, RI

CEA6580	Punta Gorda, FL
CEA6640	Raleigh-Durham-Chapel Hill, NC
CEA6680	Reading, PA
CEA6780	Riverside-San Bernardino, CA-AZ
CEA6840	Rochester, NY
CEA6880	Rockford, IL
CEA6895	Rocky Mount, NC
CEA6960	Saginaw-Bay City-Midland, MI
CEA7040	St. Louis, MO-IL
CEA7240	San Antonio, TX
CEA7320	San Diego, CA
CEA7360	San Francisco, CA
CEA7400	San Jose, CA
CEA7500	Santa Rosa, CA
CEA7510	Sarasota-Bradenton, FL
CEA7560	Scranton-Wilkes-Barre-Hazleton, PA
CEA8200	Tacoma, WA
CEA8240	Tallahassee, FL-GA
CEA8280	Tampa-St. Petersburg-Clearwater, FL
CEA8320	Terre Haute, IN-IL
CEA8480	Trenton, NJ
CEA8720	Vallejo-Fairfield-Napa, CA
CEA8735	Ventura, CA
CEA8760	Vineland-Millville-Bridgeton, NJ
CEA8800	Waco, TX
CEA8840	Washington, DC-MD-VA-WV
CEA8960	West Palm Beach-Boca Raton, FL
CEA9160	Wilmington-Newark, DE-MD
CEA9270	Yolo, CA
CEA9280	York, PA
CEA9340	Yuba City, CA
CEA9360	Yuma, AZ

CMAs:

CMA	Name
CMA001	New York, NY-NJ/Nassau-Suffolk
CMA002	Los Angeles-Long Beach/Anaheim
CMA003	Chicago, IL
CMA004	Philadelphia, PA
CMA005	Detroit/Ann Arbor, MI
CMA006	Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH
CMA007	San Francisco-Oakland, CA
CMA008	Washington, DC-MD-VA
CMA009	Dallas-Fort Worth, TX
CMA010	Houston, TX
CMA011	St. Louis, MO-IL

CMA012	Miami-Fort Lauderdale-Hollywood, FL
CMA013	Pittsburgh, PA
CMA014	Baltimore, MD
CMA015	Minneapolis-St. Paul, MN-WI
CMA017	Atlanta, GA
CMA018	San Diego, CA
CMA022	Tampa-St. Petersburg, FL
CMA023	Cincinnati, OH-KY-IN
CMA024	Kansas City, MO-KS
CMA027	San Jose, CA
CMA028	Indianapolis, IN
CMA029	New Orleans, LA
CMA031	Columbus, OH
CMA032	Hartford-New Britain-Bristol, CT
CMA033	San Antonio, TX
CMA034	Rochester, NY
CMA037	Louisville, KY-IN
CMA038	Providence-Warwick-Pawtucket, RI
CMA042	Bridgeport-Stamford-Norwalk-Danbury, CT
CMA044	Albany-Schenectady-Troy, NY
CMA046	Nashville-Davidson, TN
CMA047	Greensboro-Winston-Salem-High Point, NC
CMA048	Toledo, OH-MI
CMA049	New Haven-West Haven-Waterbury-Meriden, CT
CMA050	Honolulu, HI
CMA051	Jacksonville, FL
CMA053	Syracuse, NY
CMA054	Gary-Hammond-East Chicago, IN
CMA056	Northeast Pennsylvania, PA
CMA058	Allentown-Bethlehem-Easton, PA
CMA060	Orlando, FL
CMA061	Charlotte-Gastonia, NC
CMA064	Grand Rapids, MI
CMA068	Flint, MI
CMA069	Wilmington, DE-NJ-MD
CMA070	Long Branch-Asbury Park, NJ
CMA071	Raleigh-Durham, NC
CMA072	West Palm Beach-Boca Raton, FL
CMA073	Oxnard-Simi Valley-Ventura, CA
CMA074	Fresno, CA
CMA075	Austin, TX
CMA076	New Bedford-Fall River, MA
CMA078	Lansing-East Lansing, MI
CMA080	Baton Rouge, LA
CMA081	El Paso, TX
CMA082	Tacoma, WA
CMA084	Harrisburg, PA
CMA088	Chattanooga, TN-GA