BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers	)	WT Docket No. 05-265
	)	
Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services	)	WT Docket No. 00-193
	)	

COMMENTS OF NY3G PARTNERSHIP

NY3G Partnership ("NY3G") hereby submits these Comments in the above-referenced proceeding to reexamine CMRS roaming regulations.[1] Roaming has contributed greatly to the success of nationwide mobile services and will remain critical in the evolution of such services. As such, NY3G urges the Commission to continue to facilitate roaming arrangements by retaining its existing CMRS roaming rules and expanding these rules to explicitly encompass EBS/BRS band providers that offer CMRS. In addition, the Commission should impose certain additional roaming obligations on such providers in light of the absence of robust, self-sustaining competition among service providers in the band.

[1] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket 05-265, FCC 05-160, at ¶ 20 (Aug. 24, 2005) ("*NPRM*").

Background

NY3G. NY3G is an EBS/BRS licensee authorized to operate in New York City. NY3G expects to deploy facilities capable of providing a wide variety of services, including possibly CMRS and two-way, high-speed broadband services. Because NY3G's spectrum resources are currently limited to the New York City area, NY3G would have to utilize roaming arrangements to expand the geographic scope of its services.

NPRM. The Commission released the *NPRM* on August 24, 2005 to "reexamine the state of roaming in the CMRS marketplace and whether CMRS providers should be subject to roaming obligations." *NPRM* at ¶ 20. Specifically, the Commission sought comment with respect to whether it should (i) retain the existing obligation that CMRS carriers provide manual roaming capability to subscribers of other carriers using technologically-compatible equipment; *NPRM* at ¶ 23; (ii) adopt a new rule prohibiting CMRS carriers from blocking their customers' access to the networks of other carriers; *id*; and (iii) impose additional automatic roaming obligations on CMRS carriers, in light of the "recent evolution of the CMRS marketplace[.]" *NPRM* at ¶ 27.

Discussion

NY3G fully supports the retention of existing Section 20.12, which provides that CMRS carriers "must provide mobile radio service upon request to all subscribers in good standing to the services of any [other CMRS] carrier[.]"[2] What the Commission noted in 1996 remains valid today: "ubiquitous roaming … is important to the development of a seamless, nationwide 'network of networks.'"[3] Roaming will continue to play a critical role in promoting the public interest as CMRS evolves and carriers develop more advanced networks for the delivery of

[2] 47 C.F.R. §20.12(c).

[3] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 at ¶¶ 2,8 (1996).

voice, data, and other forms of content. Accordingly, the Commission should retain its existing manual roaming requirement. Further, because newly-available EBS/BRS spectrum may be used to provide CMRS, the Commission should expand its rules to encompass EBS/BRS carriers that provide such service.[4]

In addition, the Commission should recognize that CMRS carriers using the EBS/BRS band will be able to provide more advanced services, including high-speed wireless broadband services. As NY3G has stated in a separate, but related proceeding,[5] to ensure that consumers will also be able to use these next-generation services on a nationwide basis, despite the dominance of that spectrum by a single entity, the Commission should take the following actions:

- **The Commission should prohibit EBS/BRS band carriers that provide CMRS from "blocking" their customers from accessing the networks of other EBS/BRS band CMRS carriers –** The Commission has recognized that in order to give Section 20.12 its full force and preserve the full range of options available to end-users, carriers must be prohibited from blocking their own subscribers from accessing the networks of competitors. In the *Cingular-AT&T Wireless Merger Order*, for example, the Commission ordered post-merger Cingular to permit its customers to access the networks of other carriers after noting concerns that the

[4] *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 Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165, at ¶¶ 111-112 (conferring blanket authority on BRS licensees to provide mobile service); ¶ 227 (maintaining flexible regulatory status for BRS to allow licensees to provide common carrier services, including CMRS).

[5] NY3G hereby incorporates by reference the arguments it presented in the Sprint Nextel merger proceeding. *See Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Section 214 and 310(d)*, WT Docket 05-63. A copy of the Petition to Deny filed by NY3G in that proceeding is attached hereto as Exhibit A.

merged entity could "engage in allegedly anticompetitive and other unreasonable conduct such as blocking its subscribers access to other networks."[6] The same concerns arise with respect to EBS/BRS band CMRS carriers generally, given the nascent nature of the market for EBS/BRS band CMRS, which is not yet characterized by robust competition. Accordingly, the Commission should impose an "anti-blocking" obligation on EBS/BRS band CMRS carriers.

- **The Commission should require EBS/BRS band carriers that provides CMRS to engage in good faith negotiations with other EBS/BRS band CMRS carriers to execute roaming agreements and to submit to arbitration if such agreements cannot be executed through negotiations** – The Commission has continuously emphasized the public interest benefits of roaming agreements, and the numerous benefits that consumers derive from access to a variety of competitively-priced nationwide services.[7] However, there is no evidence that market forces will ensure the proliferation of roaming agreements among EBS/BRS band CMRS carriers. Accordingly, in order to facilitate the beneficial interconnection anticipated by Section 201 of the Communications Act, as amended, 47 U.S.C. §201, the Commission should explicitly require EBS/BRS band CMRS carriers to negotiate roaming agreements in good faith, and to submit to arbitration if such negotiations are unsuccessful.
- **The Commission should require EBS/BRS band carriers that provide CMRS to publish all roaming agreements, and to allow other carriers to adopt these agreements.** Sections 201 and 202 of the Communications Act require carriers to provide telecommunications

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[6] *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, FCC 04-255 at ¶ 182, WT Docket 04-70, (Oct. 22, 2004) ("*Cingular-AT&T Wireless Merger Order*").

[7] *See, e.g., Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 at ¶¶ 2,8 (1996).

services to other carriers on a non-discriminatory basis.[8] The Commission should require EBS/BRS band CMRS carriers to publish their roaming agreements so that other carriers can effectively monitor compliance with Sections 201 and 202. The Commission should also permit other carriers to adopt these published agreements, as doing so would ensure that terms and conditions are available on a non-discriminatory basis.

Respectfully submitted,

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[8] 47 U.S.C. §§201(b), 202.

Exhibit A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

APR - 5 2005

Federal Communications Commission
Office of Secretary

In re Applications of	)	
Nextel Communications, Inc., Transferor	)	
And	)	WT Docket No. 05-63
Sprint Corporation, Transferee	)	
For Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act	)	

PETITION TO DENY

NY3G Partnership ("NY3G")[1] hereby submits this Petition to Deny the above-referenced application, in which Nextel and Sprint (collectively, the "Applicants") propose to transfer control of Nextel's licenses, authorizations, and leased spectrum rights to operate on EBS and BRS spectrum in the 2.5 GHz band to Sprint as part of a merger of the two companies, which would create the new corporation Sprint Nextel.[2] Although the Applicants argue that this consolidation would not have adverse competitive effects in any local market, the Applicants completely fail to address the potential anticompetitive effects of the proposed merger on the

[1] NY3G is the incumbent MMDS co-channel licensee operating on the F group channels in the 2.5 GHz band in New York City.

[2] *See* ULS File No. 0002031766 (Feb. 8, 2005) (lead application). *See also Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, Application for Transfer of Control at 2, 47-48, WT Docket 05-63 (Feb. 8, 2005) ("Public Interest Statement"). NY3G takes no position with respect to the issues raised by the Applicants' proposed transfer of Nextel's CMRS licenses and authorizations.

nascent market for nationwide EBS/BRS services. The proposed merger would provide Sprint Nextel with a dominant position in this market, giving Sprint Nextel the ability and incentive to either refuse to enter into roaming arrangements altogether, or to impose unreasonable, non-reciprocal, and discriminatory contractual terms and conditions on competitors. Such anticompetitive behavior would result in higher prices and decreased service options for consumers, adversely affecting the public interest. Accordingly, should it otherwise find the proposed merger to be in the public interest, the Commission should impose the following conditions on the combined entity in order to ensure that other carriers can compete with Sprint Nextel through the use of roaming arrangements:

- Sprint Nextel should be required to provide service upon request to all subscribers in good standing to the services of any EBS/BRS carrier, including roamers, while such subscribers are located within any portion of Sprint Nextel's licensed service area where facilities have been constructed and service to subscribers has commenced, to the extent reasonably technically feasible.

- Sprint Nextel should be prohibited from preventing its customers from reaching the networks of another EBS/BRS carrier.

- If a Sprint Nextel EBS/BRS customer chooses to switch from Sprint Nextel's EBS/BRS service to that of another service provider, Sprint Nextel should be required to allow that customer to retain any existing telephone numbers assigned by Sprint Nextel in connection with the service.

- Sprint Nextel should be required to engage in good faith negotiations with other EBS/BRS carriers to execute roaming agreements and to submit to arbitration if such agreements cannot be executed through negotiations.

- Sprint Nextel should be required to publish all roaming agreements and to allow other carriers to adopt these agreements.

- Sprint Nextel should be prohibited from maintaining an attributable interest in a total of more than 48 MHz of licensed or leased EBS/BRS spectrum within any Basic Trading Area, and should be required to divest itself of its EBS/BRS spectrum to the extent necessary to comply with this condition.

I. THE PROPOSED MERGER WOULD GIVE SPRINT NEXTEL A DOMINANT POSITION IN THE NATIONWIDE EBS/BRS MARKET THAT COULD BE USED TO FRUSTRATE THE DEVELOPMENT OF A COMPETITIVE MARKET FOR NATIONWIDE EBS/BRS SERVICES

The Applicants contend that "[o]ne of the principal benefits of the merger is the creation of a nearly nationwide footprint in the 2.5 GHz band."[3] The merger would give Sprint Nextel spectrum covering 85% of the pops in the nation's top 100 markets and access to an average of at least 84.5 MHz of EBS/BRS spectrum in 386 of the nation's 493 BTAs – or at least 43.5% of the available spectrum in these markets.[4] The combined entity's next-largest competitor, Clearwire Corporation, would have a presence in only about 70 markets.[5] Moreover, as Sprint Nextel's own application makes clear, piecemeal acquisition of spectrum involves significant transaction costs and is expensive.[6] Consequently, Sprint Nextel would be the only carrier initially in a position to provide nationwide services.

Sprint Nextel's dominant position would give it the ability and incentive to either refuse roaming arrangements altogether, or to impose unreasonable, non-reciprocal, or discriminatory contractual terms and conditions on competitors. Sprint Nextel would have little reason to negotiate roaming agreements with other carriers in good faith given its extensive, geographically diverse spectrum holdings. At the same time, Sprint Nextel's consolidation of EBS/BRS spectrum would reduce the alternative roaming options available to other carriers. Roaming arrangements, however, could be used initially by competitors to create "virtual"

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[3] Public Interest Statement at 47.

[4] *Id.* at 47-48.

[5] *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 Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket 03-66, Petition for Partial Reconsideration of Clearwire Corporation, at 2-3 (Jan. 10, 2005).

[6] Public Interest Statement at 47-48.

national footprints while deploying their own nationwide systems. These arrangements would directly benefit consumers by ensuring the availability of multiple alternatives to Sprint Nextel's service offering, placing downward pressure on Sprint Nextel's pricing policies, and facilitating the development of sustainable facilities-based competition in the long-run.[7]

II. THE COMMISSION SHOULD IMPOSE CONDITIONS ON THE PROPOSED MERGER IN ORDER TO ENSURE THAT SPRINT NEXTEL DOES NOT FRUSTRATE COMPETITORS' ATTEMPTS TO PROVIDE SEAMLESS NATIONWIDE SERVICE

Should the Commission otherwise find the proposed merger to be in the public interest, NY3G urges the Commission to impose the following conditions on the combined entity in order to ensure that other carriers can compete with Sprint Nextel:[8]

- **Sprint Nextel should be required to provide service upon request to all subscribers in good standing to the services of any EBS/BRS carrier, including roamers, while such subscribers are located within any portion of Sprint Nextel's licensed service area where facilities have been constructed and service to subscribers has commenced, to the extent reasonably technically feasible.** This condition is no different from that already imposed on CMRS providers of both voice and data services by Section 20.12 of the

[7] In the CMRS context, the FCC has repeatedly emphasized that "ubiquitous roaming ... is important to the development of a seamless, nationwide 'network of networks.'" *See, e.g.*, *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 at ¶¶ 2,8 (1996).

[8] The Commission has clear authority to impose such requirements in the public interest. *Id.* at ¶ 10 (classifying roaming as a common carrier service, and grounding authority to impose roaming obligation in Section 201(b), 202(a), 303(r), and 309 of the Communications Act). Sprint itself has concluded that the Commission should be prepared to intervene where industry consolidation could permit dominant carriers to stifle the availability of roaming services. *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Comments of Sprint Corporation at 9-10 (Jan. 5, 2001).

Commission's Rules.[9] The Commission has recognized that this condition provides an essential check against the potential anticompetitive harms of consolidation with respect to the availability of roaming service.[10] However, Section 20.12 is currently inapplicable to EBS/BRS carriers, even if those carriers provide services that are essentially CMRS in nature.[11] There is no logical justification for this differential treatment; the concerns that prompted the Commission to adopt the roaming obligations contained in Section 20.12 should also prompt their application to Sprint Nextel. To the extent that the imposition of this obligation would require a Commission rulemaking, the Commission should stay consideration of the proposed merger until such a rulemaking can be concluded.

- **Sprint Nextel should be prohibited from preventing its customers from reaching the networks of another EBS/BRS carrier.** The Commission has recognized that in order to give Section 20.12 its full force and preserve the full range of options available to end-users, carriers must also be prohibited from blocking their own subscribers from accessing the networks of competitors. In the *Cingular-AT&T Wireless Merger Order*, the Commission ordered post-merger Cingular to permit its customers to access the networks of other carriers after expressing "concern[s] about ... claims ... that the merged entity intends to engage in allegedly anticompetitive and other unreasonable conduct such as blocking its subscribers

[9] 47 C.F.R. §20.12; *see also Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 15 FCC Rcd 15975 at ¶18 (2000) (modifying CMRS roaming rule to cover voice and data services).

[10] *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, FCC 04-255 at ¶ 182, WT Docket 04-70, (Oct. 22, 2004) ("*Cingular Merger Order*").

[11] *See* 47 C.F.R. §20.12(a). The Commission imposed few direct restrictions on 2.5 GHz operations, maintaining flexibility in the types of services that could be offered in the band. *See, gen., 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*, 19 FCC Rcd 14165 at ¶ 321 (2004).

access to other networks."[12] These same concerns arise in the context of the proposed merger, and as such the Commission should impose a similar condition on Sprint Nextel.

- **If a Sprint Nextel EBS/BRS customer chooses to switch from Sprint Nextel's EBS/BRS service to that of another service provider, Sprint Nextel should be required to allow that customer to retain any existing telephone numbers assigned by Sprint Nextel in connection with the service.** The Commission has already recognized the numerous benefits of number portability, which: (i) permits consumers to more easily select the best service at the lowest price, without the additional costs inherent in switching to a new telephone number; (ii) facilitates competition among carriers, which are less able to "lock in" existing customers; and (iii) stimulates the development of new services and technologies by ensuring that new market entrants can more easily woo potential customers.[13] The Commission has clear authority to extend its existing number portability rules (47 C.F.R. §§52.20 et seq.) to EBS/BRS licensees where warranted, and should do so in the context of the proposed merger.[14] A number portability condition would ensure that even if customers initially select Sprint Nextel's nationwide EBS/BRS service offering (which is likely, given Sprint Nextel's head start in this market), these customers could later switch, with relative ease, to competing carriers that might offer superior service at lower prices. Number portability would also place downward pressure on Sprint Nextel's prices, while encouraging competing carriers to enter the market for nationwide EBS/BRS services. Accordingly, the

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[12] *See Cingular Merger Order* at ¶ 182.

[13] *Telephone Number Portability*, 11 FCC Rcd 8352, at ¶¶ 157-60 (1996).

[14] *See* 47 U.S.C. §§151, 152, 154, 332. The Commission has previously found that it has broad authority to impose number portability requirements on carriers pursuant to the Communications Act and its public interest mandate. *See id.* at ¶ 153.

Commission should require Sprint Nextel to comply with the Commission's existing number portability rules.

- **Sprint Nextel should be required to engage in good faith negotiations with other EBS/BRS carriers to execute roaming agreements, and to submit to arbitration if such agreements cannot be executed through negotiations.** The Commission has continuously emphasized the public interest benefits of roaming agreements, and the numerous benefits that consumers derive from access to a variety of competitively-priced nationwide services.[15] However, there is no evidence that market forces will ensure the proliferation of roaming agreements among EBS/BRS carriers.[16] Moreover, in the CMRS context, Sprint itself has acknowledged that carriers are required to provide roaming service to other carriers upon request pursuant to Section 201 of the Communications Act.[17] The Commission should recognize a similar Section 201 obligation in the EBS/BRS context, and impose that obligation on Sprint Nextel.

- **Sprint Nextel should be required to publish all roaming agreements, and to allow other carriers to adopt these agreements.** Section 201 of the Communications Act requires carriers to provide telecommunications services to other carriers on a non-discriminatory

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[15] *See, e.g., Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 at ¶¶ 2,8 (1996).

[16] In the CMRS context, market forces have given rise to multiple automatic roaming agreements, causing the Commission to forebear from the creation of more specific roaming obligations. *See, e.g., 2004 Biennial Regulatory Review*, App. III, Analysis of Rule 20.12, DA 05-20, WT Docket No. 04-180 (Jan. 5, 2005). No evidence of such competition exists with respect to the market for EBS/BRS services.

[17] *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Comments of Sprint Corporation at 9-10 (Jan. 5, 2001) ("Sprint Roaming Comments"); *see also* 47 U.S.C. §201(a).

basis.[18] Sprint has previously acknowledged the important role that this requirement plays in ensuring a competitive marketplace for roaming services.[19] The Commission should require Sprint Nextel to publish its roaming agreements so that other carriers can effectively monitor Sprint Nextel's compliance with Section 201. The Commission should also permit other carriers to adopt these published agreements, as doing so would ensure that terms and conditions are available on a non-discriminatory basis.

- **Sprint Nextel should be prohibited from maintaining an attributable interest in a total of more than 48 MHz of licensed or leased EBS/BRS spectrum within any Basic Trading Area, and should be required to divest itself of its EBS/BRS spectrum to the extent necessary to comply with this condition.**[20] The Commission previously imposed such a spectrum cap in the CMRS context, after noting the mere possibility that firms "could unilaterally or in combination exclude efficient competitors, reduce the quantity of service available to the public, and increase prices to the detriment of consumers."[21] The CMRS

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[18] 47 U.S.C. §201(b).

[19] Sprint Roaming Comments at 9-10.

[20] NY3G does not intend this spectrum cap to replace the existing "four channel limitation rule," which limits EBS licensees to the use of no more than four channels in one channel group. In other proceedings before the Commission, NY3G has provided extensive justification for the retention of the rule. *See, e.g.., 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*, WT Docket 03-66, Comments of NY3G Partnership, (Jan. 10, 2005).

[21] *See Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* Third Report and Order, 9 FCC Rcd 7988 at ¶¶ 238-40 (1994). In the CMRS context, the Commission limited licensees to an attributable interest in no more than 45 MHz of 180 MHz of total CMRS spectrum in each non-rural market, and 55 MHz of this total in each rural market. *See* 47 C.F.R. 20.6 (2000). The Commission selected these limits, in large part, to ensure that at least three new competitors would be available in each market. Third Report and Order at ¶ 264, n.498. In the EBS/BRS context, 194 MHz of spectrum would be available within each local market. A spectrum cap of 48 MHz would (i) approximate the previous CMRS cap; (ii) permit each licensee to operate up to eight channels, consisting of any combination of 6 MHz

spectrum cap facilitated the evolution of self-sustaining competition within that market, and was eliminated only after the Commission concluded that competition had become "robust enough in CMRS markets that it is no longer appropriate to imposed overbroad, *a priori* limits on spectrum aggregation[.]"[22] If the proposed merger is approved, Sprint Nextel could use its extensive EBS/BRS spectrum holdings in the vast majority of local markets to frustrate the efforts of carriers seeking to construct their own facilities-based nationwide EBS/BRS footprints, which would exclude efficient competitors, reduce the quantity of wireless broadband service available to the public,[23] and increase prices to the detriment of consumers. Accordingly, the Commission should limit the amount of EBS/BRS spectrum Sprint Nextel can maintain in each local market, in order to (i) discourage anticompetitive behavior while maintaining incentives for innovation and efficiency, (ii) promote competition in EBS/BRS markets, (iii) facilitate the efficient administration of EBS/BRS spectrum acquisitions, and (iv) provide regulatory certainty to the marketplace.[24]

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high-power channels and 5.5 MHz low-power channels, which would provide more than sufficient economies of scale to EBS/BRS carriers; and (iii) ensure at least two new competitors to Sprint Nextel within each local market as well as the nationwide market for EBS/BRS services.

[22] *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, 16 FCC Rcd 22668, at ¶ 51 (2001)

[23] NY3G notes that the 2.5 GHz band is ideally suited for the development of wireless broadband services due to the large size of the spectrum block, the low volume of usage by ITFS, and the ready availability of advanced technologies. The Commission should be especially loathe to allow single firm to control competitors' access to the best broadband spectrum likely to be available in the foreseeable future.

[24] *Id.* at ¶ 54.

Conclusion

For the reasons stated above, should the Commission otherwise find the proposed merger to be in the public interest, NY3G urges the Commission to impose the above-specified conditions on Sprint Nextel in order to ensure that other carriers can compete in the nationwide EBS/BRS market through the use of roaming arrangements.

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Dated: April 5, 2005

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing "PETITION TO DENY," as corrected, were served via U.S. mail on this 5th day of April 2005 to the following:

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