



## EXECUTIVE SUMMARY

In its August 2007 *Roaming Order*, the Commission correctly concluded, on the basis of substantial record evidence and the agency's cumulative experience and expertise, that it is in the public interest to extend automatic roaming obligations to push-to-talk (PTT) services provided by commercial mobile carriers, and this determination is entitled to substantial deference. Sprint Nextel does not provide any basis in its Petition for Reconsideration of the *Roaming Order* for the Commission to reconsider its decision regarding PTT roaming and instead presents only vague and unfounded arguments that are not supported by, or in disregard of, Commission precedent and the record of this proceeding. Accordingly, Sprint Nextel's Petition should be denied with respect to this issue.

Sprint Nextel claims that the Commission's decision should be invalidated because it never explained the relevance of the fact that PTT is typically bundled with interconnected mobile services. To the contrary, the Commission made clear that a key element in its public interest analysis for roaming is the expectation of consumers, and that consumers "expect to roam automatically on other carriers' networks when out of their home service area." Because PTT is typically bundled on the same handset with an interconnected service (such as voice telephony), the Commission reasonably found that consumers expect the same seamless mobility with PTT as they do for voice. The Commission already has a substantial record and extensive experience with PTT, and thus its decision to mandate PTT roaming was rational and well reasoned.

Sprint Nextel's contrary assertions that there is no evidence that consumers expect seamless roaming for PTT and that there has been no demonstration of market failure causing harm to consumers likewise ignore entirely the substantial record of this proceeding, as well as

Sprint Nextel's own well-documented behavior with respect to PTT roaming. Sprint Nextel also raises irrelevant arguments regarding "regulatory parity" between interconnected and non-interconnected services and thoroughly misses the point regarding the Commission's observation that consumers perceive PTT as a feature that is typically offered as an adjunct to basic voice services.

In addition, contrary to Sprint Nextel's contention, automatic roaming does not eliminate geographic coverage as a basis for competition. For example, roaming will not enable a carrier to establish any retail presence or to compete for consumers outside of its own network coverage area, and roaming charges could make switching to a carrier with broader geographic coverage an attractive option.

Finally, Sprint Nextel's position that the extension of the automatic roaming rule to PTT "addresses a specific dispute" rather than an industry-wide issue ironically contradicts the very position Sprint Nextel itself so strongly advocated. During the Commission's reviews of its mergers in 2005 and 2006, Sprint Nextel argued that this very rulemaking proceeding "is the appropriate forum for addressing" SouthernLINC Wireless' concerns regarding roaming – a position that the Commission explicitly accepted. Now that the use of this very rulemaking proceeding has resulted in a finding that it disagrees with, Sprint Nextel has apparently changed its mind without offering any explanation.

Accordingly, for the reasons set forth herein, the Commission should reject Sprint Nextel's Petition with respect to push-to-talk roaming and affirm its well-founded conclusion that extending automatic roaming obligations to PTT serves the public interest.

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not supported by, or in disregard of, Commission precedent and the record of this proceeding.

Accordingly, for the reasons set forth herein, Sprint Nextel's request that the Commission reconsider its decision to include PTT in the scope of its automatic roaming rule should be rejected, and Sprint Nextel's Petition should be denied with respect to this issue.

**I. THE COMMISSION HAS SUFFICIENT BASIS TO FIND THAT EXTENDING AUTOMATIC ROAMING OBLIGATIONS TO PUSH-TO-TALK SERVES THE PUBLIC INTEREST**

The primary theme of Sprint Nextel's Petition is its allegation that the Commission's decision to extend automatic roaming obligations to push-to-talk features and services "is arbitrary and capricious and unsupported by the record evidence."<sup>2</sup> As demonstrated below, however, the Commission had before it ample record evidence, as well as its own "cumulative experience and consequent expertise,"<sup>3</sup> to find that extending automatic roaming obligations to PTT is in the public interest.

The United States Supreme Court has "repeatedly emphasized that the Commission's judgment regarding how the public interest is best served is entitled to substantial judicial deference."<sup>4</sup> In the *Roaming Order*,<sup>5</sup> the Commission correctly concluded that it is in the public interest to require carriers to provide automatic roaming

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<sup>2</sup> / Petition at 1.

<sup>3</sup> / *Wisconsin Power & Light Co. v. Federal Energy Regulatory Commission*, 363 F.3d 453, 463 (D.C. Cir. 2004).

<sup>4</sup> / *See FCC v. WNCN Listeners Guild*, 450 U.S. 582, 597 (1981).

<sup>5</sup> / *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143 (rel. Aug. 16, 2007) ("*Roaming Order*" and "*FNPRM*").

for voice, PTT, and text messaging (SMS) services to any technologically compatible requesting carrier on reasonable and nondiscriminatory terms and conditions.

This conclusion did not arise in a vacuum. Rather, this conclusion was the result of the Commission's cumulative experience and expertise developed not only through the substantial record of this proceeding, but also during the course of well over a decade of proceedings and investigations involving commercial wireless services. These include, but are not limited to, previous Commission proceedings on CMRS roaming and resale,<sup>6</sup> the Commission's analysis of several significant mergers between CMRS carriers (including two involving Petitioner Sprint Nextel),<sup>7</sup> and the Commission's own reports

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<sup>6</sup> / See, e.g., *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems and Amendment to Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469 (1981); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, First Report and Order, 11 FCC Rcd 18455 (1996); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, et al., Memorandum Opinion and Order and Order on Reconsideration, 14 FCC Rcd 16340 (1999); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Third Report and Order and Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 15975 (2000); *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Notice of Proposed Rulemaking, 15 FCC Rcd 21628 (2000).

<sup>7</sup> / See *Applications of Nextel Communications, Inc. and Sprint Corporation*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005) ("*Sprint/Nextel Merger Order*"); *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0002444650, 0002444656, 0002456809, Memorandum Opinion and Order, 21 FCC Rcd 7358 (2006) ("*Nextel Partners Merger Order*"); See also *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004); *Applications of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053 (2005). In addition, the Commission recently approved the transfer of control

and analyses of competitive market conditions with respect to commercial mobile services, which have been prepared annually at the direction of Congress since 1995.<sup>8</sup> All of these proceedings, and more, are cited to by the Commission in the *Roaming Order*.

According to the US Court of Appeals for the District of Columbia Circuit, a federal agency can “properly take official notice of matters of common knowledge, of evidence available to [it] from other proceedings, and of matters known to the agency through its cumulative experience and consequent expertise.”<sup>9</sup> As demonstrated above, this is clearly what the Commission has done in finding that “it would serve the public interest to extend automatic roaming obligations to push-to-talk and SMS.”<sup>10</sup>

Sprint Nextel’s Petition consists largely of vague and general assertions that, despite the foregoing, the Commission’s decision on PTT roaming is “unsupported” by record evidence. These aspects of Sprint Nextel’s Petition have no foundation in law or precedent nor in the record of this proceeding. Sprint Nextel’s Petition ignores the

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of ALLTEL Corporation to Atlantis Holdings and has pending before it merger applications between AT&T and Dobson Communications, T-Mobile USA and SunCom, and Verizon Wireless and Rural Cellular Corporation.

<sup>8</sup> / See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eleventh Report, 21 FCC Rcd 10947 (2006) (“*Eleventh CMRS Competition Report*”); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908 (2005) (“*Tenth CMRS Competition Report*”); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597 (2004) (“*Ninth CMRS Competition Report*”).

<sup>9</sup> / *Wisconsin Power & Light Co.*, 363 F.3d at 463 (D.C. Cir. 2004) (citing *Nat’l Classification Comm. v. United States*, 779 F.2d 687, 695 (D.C. Cir. 1985)).

<sup>10</sup> / *Roaming Order* at ¶ 54.

extensive body of record evidence before the Commission (and which the Commission cites to extensively in the *Roaming Order*). Sprint Nextel's assertions also make no allowance for the "cumulative experience and consequent expertise" attributed to the Commission and other federal agencies by the courts. Accordingly, the Commission should reject Sprint Nextel's Petition with respect to PTT roaming and affirm its well-founded conclusion that extending automatic roaming obligations to PTT serves the public interest.

## **II. SPRINT NEXTEL PROVIDES NO BASIS FOR THE COMMISSION TO RECONSIDER ITS DECISION ON PUSH-TO-TALK ROAMING**

As discussed below, Sprint Nextel does not provide any basis in its Petition for the Commission to reconsider its decision to include push-to-talk services within the scope of the automatic roaming rule. The Commission should therefore reject Sprint Nextel's request and deny its Petition to the extent it seeks reconsideration of PTT roaming.

### **A. The Relevance of Bundling Push-to-Talk with Other CMRS Services**

Sprint Nextel questions the relevance of the Commission's observation that PTT is "typically bundled as a feature on the handset with other CMRS services ... that are interconnected with the public switched network." Sprint Nextel argues that, because the Commission did not extend the roaming rule to other non-interconnected services that are also bundled with interconnected voice, the fact that PTT is bundled "cannot be a basis to justify a PTT roaming obligation." This argument misses the point and ignores the reasoning underlying the Commission's decision.

The Commission made clear that a key element in its public interest analysis is the expectation of consumers. In the *Roaming Order*, the Commission said that,

“[t]oday, most wireless customers expect to roam automatically on other carriers’ networks when they are out of their home service area,” and the Commission accordingly “recognize[s] that automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country, and reducing inconsistent coverage and service qualities.”<sup>11</sup> The Commission thus held:

Given the current CMRS market situation and wireless customer expectations, we find that it is in the public interest to facilitate reasonable roaming requests by carriers on behalf of wireless customers, particularly in rural areas. In other words, in order to enable subscribers to receive service seamlessly, a CMRS carrier may make an automatic roaming request on behalf of its subscribers. If the request is reasonable, then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.<sup>12</sup>

The fact that a service or feature is typically bundled on the same handset with an interconnected service (such as voice telephony) means that consumers will generally expect to receive the same seamless mobility for that service or feature as they do for voice – a fact explicitly recognized by the Commission in the *Roaming Order*.<sup>13</sup>

While the Commission has recognized that other non-interconnected services and features are also typically bundled with interconnected services such as voice, it declined to extend the automatic roaming rule to these services *at this time* because it did not

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<sup>11</sup> / *Roaming Order* at ¶ 27.

<sup>12</sup> / *Roaming Order* at ¶ 28.

<sup>13</sup> / *Roaming Order* at ¶ 55 (“We are also aware that *consumers* consider push-to-talk and SMS as features that are typically offered as adjuncts to basic voice services, *and expect the same seamless connectivity* with respect to these features and capabilities as they travel outside their home network service areas.”) (emphasis added); *See also* *Roaming Order* at ¶ 53 (“SouthernLINC contends that push-to-talk is highly valued by subscribers because it enables subscribers to establish private conferences on a one-to-one or one-to-many basis *using a single handset that can be used for phone, paging, and wireless data services.*”) (emphasis added) (citing SouthernLINC Comments, Attachment A at 7).

consider the record to be sufficiently complete with respect to these services and features. Significantly, however, the Commission has left open the option of extending the rule to cover other non-interconnected services and features at some point in the future, and has issued a *Further Notice of Proposed Rulemaking* to develop the record further on this very issue. By contrast, the Commission already had substantial experience and a substantial record before it with respect to PTT services when it determined that extending the automatic roaming rule to these services was in the public interest.<sup>14</sup>

### **B. Interconnected and Non-Interconnected PTT Services**

In its Petition, Sprint Nextel asserts that the Commission extended the scope of its automatic roaming rule to PTT in order “to promote regulatory parity”<sup>15</sup> – even though “regulatory parity” is neither mentioned nor implied anywhere in the *Roaming Order*’s discussion of PTT services.<sup>16</sup> Sprint Nextel’s confusion apparently arises from the Commission’s observation that PTT services (along with SMS) “are interconnected features or services in some instances, but non-interconnected in others, depending on the

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<sup>14</sup> / See, e.g., *Roaming Order* at ¶¶ 52 – 53 (noting that the issue of access to push-to-talk and data roaming was “initially raised by SouthernLINC in the [2005] proceeding addressing the Sprint Nextel merger” and discussing the comments and reply comments on push-to-talk filed in the instant proceeding by SouthernLINC, AIRPEAK, Airtel, Sprint Nextel, and Nextel Partners); See also *Sprint/Nextel Merger Order*, 20 FCC Rcd at 13987-89, 14006-07, 14011-13, ¶¶ 46 – 50, 105 – 107, 123 – 128; *Nextel Partners Merger Order*, 21 FCC Rcd at 7364-65 ¶ 15 (holding that “the [roaming] concerns raised by SouthernLINC Wireless are more properly addressed in the Commission’s pending roaming rulemaking proceeding”).

In addition to these proceedings, the Commission has also examined push-to-talk services as part of its annual reports on CMRS market competition. See, e.g., *Eleventh CMRS Competition Report*, 21 FCC Rcd 10947; *Tenth CMRS Competition Report*, 20 FCC Rcd 15908; *Ninth CMRS Competition Report*, 19 FCC Rcd 20597.

<sup>15</sup> / Petition at 3.

<sup>16</sup> / See *Roaming Order* at ¶¶ 52 – 55.

technology and network configuration chosen by the carriers.”<sup>17</sup> However, this is nothing more than a factual statement by the Commission regarding the nature of PTT service.

As the text of the *Roaming Order* makes clear, the Commission’s decision was not based on considerations related to “regulatory parity.” Rather, the Commission concluded that consumers expect the same seamless connectivity for PTT as they do for mobile voice telephony, and the same public interest concerns thus warrant extending the automatic roaming rule to push-to-talk as well, regardless of whether a particular PTT application is interconnected or non-interconnected.<sup>18</sup>

Sprint Nextel also attacks the accuracy of the Commission’s observation that PTT is an interconnected feature or service in some instances, arguing that the *Roaming Order* “does not cite any record evidence for this assertion and, in fact, there is no such evidence.”<sup>19</sup> Sprint Nextel acknowledges that the *Roaming Order* “cites two prior orders for the proposition that ‘some’ wireless carriers (not identified) offer PTT ‘via the public switched network’,” but asserts that “neither of the two cited orders makes such statements.”<sup>20</sup> Sprint Nextel both misunderstands and mischaracterizes the record with these assertions.

The *Roaming Order*’s discussion of PTT<sup>21</sup> cites to, among other things, the 2005 *Sprint/Nextel Merger Order*, in which the Commission stated that “PTT generally is bundled as a feature with other services such as mobile voice and mobile data on the

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<sup>17</sup> / Petition at 3 (citing *Roaming Order* at ¶ 55).

<sup>18</sup> / See *Roaming Order* at ¶ 55.

<sup>19</sup> / Petition at 3.

<sup>20</sup> / Petition at 3.

<sup>21</sup> / See *Roaming Order*, note 133 (citing the *Sprint/Nextel Merger Order*, 20 FCC Rcd at 13987-89 ¶¶ 46 – 50).

handset *and is usually available through the public switched network.*”<sup>22</sup> In the same paragraph from the *Sprint/Nextel Merger Order*, the Commission then noted, “*Dispatch* [as opposed to PTT] differs from mobile voice communications because it is generally not interconnected with the public switched telephone network (PSTN) ...”<sup>23</sup>

In a subsequent paragraph of the *Sprint/Nextel Merger Order* (also cited in note 133 of the *Roaming Order*), the Commission addressed PTT services provided by Nextel and other carriers using different technology platforms.<sup>24</sup> Specifically, the Commission found that “Nextel provides digital wireless services including a walkie-talkie function that allows Nextel customers to communicate ‘one-to-one or one-to-many instantly with the push of a button,’” and that “[s]ome cellular and broadband PCS carriers, including Sprint, also offer PTT functionality.”<sup>25</sup> In support of this point, the Commission cited to the *Ninth CMRS Competition Report*, which lists Verizon Wireless and Alltel as among those cellular and broadband PCS carriers who “have begun to offer push-to-talk functionality on their networks.”<sup>26</sup> The *Sprint/Nextel Merger Order* also contains a competition analysis of Nextel’s PTT service (identified by the Commission as a “central feature of Nextel’s mobile telephony service”), comparing it to the PTT offerings from Verizon Wireless, Sprint PCS, and Alltel, and noting further that US Cellular had

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<sup>22</sup> / *Sprint/Nextel Merger Order*, 20 FCC Rcd at 13987-88 ¶ 46 (emphasis added).

<sup>23</sup> / *Id.* (emphasis added). In its Petition, Sprint Nextel misquotes this passage, giving the impression that the Commission was describing *all* PTT services, rather than dispatch services. Petition at note 9.

<sup>24</sup> / *Sprint/Nextel Merger Order*, 20 FCC Rcd at 13989 ¶ 48.

<sup>25</sup> / *Id.*

<sup>26</sup> / *Id.* (citing *Ninth CMRS Competition Report*, 19 FCC Rcd at 20634 ¶ 89).

recently introduced its own PTT service and that Cingular was expected to do so as well.<sup>27</sup>

Finally, Sprint Nextel's assertions ignore publicly available information regarding the provision of PTT services by carriers other than itself and SouthernLINC Wireless. For example, AT&T and Alltel provide push-to-talk services utilizing Kodiak Networks' push-to-talk application, as demonstrated by the websites for each company.<sup>28</sup> Kodiak's PTT application is an interconnected service that uses a voice circuit and telephony services such as conference calling, call waiting, etc. In other words, contrary to Sprint Nextel's assertions, publicly available information shows that the PTT offerings of two of the nation's five largest carriers are interconnected PTT services.

**C. Sprint Nextel's Argument Regarding "Adjunct Services" is Irrelevant**

Sprint Nextel's challenge of the Commission's observation that "consumers consider PTT and SMS as features that are typically offered as adjuncts to basic voice services" is based on a fundamental misreading of the Commission's statement.<sup>29</sup> Sprint Nextel seizes on the use of the word "adjunct" and employs it as a regulatory term of art to argue that PTT does not meet the criteria for regulatory classification as an "adjunct to

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<sup>27</sup> / *Sprint/Nextel Merger Order*, 20 FCC Rcd at 14006-07 ¶¶ 105 – 107.

<sup>28</sup> / See Kodiak Networks' list of wireless operator customers at <http://www.kodiaknetworks.com/customers/> (last viewed Nov. 1, 2007) and its description of its PTT application at <http://www.kodiaknetworks.com/portfolio/pdf/ptt.pdf> (last viewed Nov. 1, 2007); See also AT&T's webpage for its "Push to Talk" offering at [http://www.wireless.att.com/learn/ptt/?WT.svl=title&source=ICB401113c0n4500&WT.mc\\_id=ICB401113c0n4500&ContentId=900271&requestid=217133](http://www.wireless.att.com/learn/ptt/?WT.svl=title&source=ICB401113c0n4500&WT.mc_id=ICB401113c0n4500&ContentId=900271&requestid=217133) (last viewed Nov. 1, 2007); Alltel's description of its "Touch2Talk" PTT offering at [http://www.alltel.com/personal/wireless/plans/add\\_ons\\_voice.html](http://www.alltel.com/personal/wireless/plans/add_ons_voice.html) (select tab for "Touch2Talk") (last viewed Nov. 1, 2007).

<sup>29</sup> / Petition at 4 (citing the *Roaming Order* at ¶ 55).

basic service.”<sup>30</sup> However, the Commission explicitly held in the *Roaming Order* that “nothing in this order should be construed as addressing regulatory classifications of push-to-talk, SMS or other data features/services.”<sup>31</sup>

In the passage in question in the *Roaming Order*, the Commission has clearly used “adjunct” in the context of describing consumer perception of PTT, not as a regulatory term of art (*i.e.*, the Commission stated that “consumers consider push-to-talk and SMS [to be] typically offered as adjuncts to basic voice services”).<sup>32</sup> There is no reasonable basis to believe that the Commission would ascribe to consumers an awareness, let alone an understanding, of all the complexities and nuances as to what “adjunct” means in strict regulatory terms. Rather, in describing consumer perception of PTT, the Commission was merely using “adjunct” in accordance with the common and generally understood meaning of this word – *i.e.*, “something joined or added to another thing but not essentially a part of it.”<sup>33</sup>

In other words, the Commission was stating that consumers consider PTT to be a feature that is typically offered as “something joined or added to” basic voice services, not that it falls within the specific criteria for regulatory classification as an “adjunct to basic service.” Sprint Nextel’s arguments regarding this issue are thus misplaced and irrelevant to the Commission’s decision.

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<sup>30</sup> / *Id.*

<sup>31</sup> / *Roaming Order* at note 134.

<sup>32</sup> / *Roaming Order* at ¶ 55 (emphasis added).

<sup>33</sup> / WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (Merriam-Webster, Inc., 1986).

Furthermore, Sprint Nextel uses the Commission's "adjunct to basic" precedent out of context. The *US West* case is part of the long line of *Computer II*<sup>34</sup> cases dealing with the distinction between unregulated "enhanced services" (now known as "information services") and regulated basic telecommunications services in the context of the Regional Bell Operating Companies' wireline businesses.<sup>35</sup> The term "adjunct to basic" is used in this context to describe certain computer-related functionalities that the Commission considered to be so closely related to basic voice services that the RBOCs were legally permitted to provide them as part of their regulated basic services.<sup>36</sup> Even assuming, *arguendo*, that this precedent was somehow relevant, PTT – as a voice service – would fall within the definition of "basic" services.<sup>37</sup> Accordingly, it would not be necessary to analyze "computer functionalities" to determine whether they were either

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<sup>34</sup> / See *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Final Decision, 77 FCC 2d 384 (1980), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied* 461 U.S. 938 (1983) ("*Computer II*").

<sup>35</sup> / Petition at 4 (citing *US West Communications, Inc. Petition for Computer III Waiver*, *BellSouth Petition for Waiver of the Computer III Rules for Reverse Search Capability*, *Southwestern Bell Telephone Company Petition for Waiver of the Computer III Rules for Reverse Search Capability*, CC Docket No. 90-623, Memorandum Opinion and Order and order on Reconsideration, 11 FCC Rcd 7997 (1996) ("*US West Reverse Search Order*").

<sup>36</sup> / See *US West Reverse Search Order*, 13 FCC Rcd 7997; *North American Telecommunications Association Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, Memorandum Opinion and Order, 101 FCC 2d 349 (1985) ("*NATA Centrex Order*"), *aff'd* 3 FCC Rcd 4385 (1988) ("*NATA Centrex Recon. Order*").

<sup>37</sup> / See, e.g., *NATA Centrex Order*, 101 FCC 2d at 358 ¶ 23 ("A basic service, on the other hand, is an offering of transmission capacity between two or more points suitable for a user's transmission needs, and subject only to the technical parameters of fidelity and distortion.") (citing *Computer II*, 77 FCC 2d at 420).

“enhanced” or “adjunct to basic.” Consequently, this entire line of cases is beside the point.

The other case cited by Sprint Nextel references the Commission’s discussion of “adjunct-to-basic” in a decision regarding customer proprietary network information (CPNI).<sup>38</sup> That case deals explicitly with the interpretation of the term “adjunct-to-basic” in the context of the CPNI privacy requirements imposed on telecommunications carriers pursuant to the Communications Act. Section 222(c)(1)(B) of the Act extends a carrier’s right to use CPNI to include the carrier’s provision of “services necessary to, or used in” basic telecommunications services.<sup>39</sup> In the *CPNI Order*, the Commission concluded that the scope of Section 222(c)(1)(B) “covers services like those formerly characterized as ‘adjunct-to-basic,’” and thus distinguished these services from other services such as voice mail, voice messaging, Internet access, etc.<sup>40</sup> There is simply no basis to argue that the Commission’s criteria for “adjunct-to-basic” for purposes of the use of CPNI under Section 222(c)(1)(B) is somehow relevant to the analysis of carriers’ roaming obligations for a basic voice service like PTT.

#### **D. Consumers Expect Seamless Roaming Connectivity**

Sprint Nextel asserts that it “cannot be accurate” that consumers expect the same seamless roaming connectivity for PTT services as they receive for voice services,

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<sup>38</sup> / Petition at note 13 (citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (“*CPNI Order*”)).

<sup>39</sup> / 47 U.S.C. § 222(c)(1)(B).

<sup>40</sup> / *CPNI Order*, 13 FCC Rcd at 8117-18 ¶ 73.

because otherwise SouthernLINC Wireless – which has never been able to offer PTT roaming (due to Sprint Nextel’s refusal to provide such service) – “would not be in business today.”<sup>41</sup> According to Sprint Nextel, this “confirms that access to intercarrier PTT roaming is not needed to succeed in the marketplace.”<sup>42</sup> This is a *reductio ad absurdum* argument which again disregards the basis of the Commission’s decision.

Automatic roaming is, first and foremost, an issue of consumer access to wireless communications services. As the wireless market has evolved and matured, so have consumer expectations regarding access to wireless services. The Commission recognized this dynamic when it stated in the *Roaming Order* that “[t]oday, most wireless customers expect to roam automatically on other carriers’ networks when they are out of their home service area.”<sup>43</sup> As discussed in Section II.A. above, the Commission found that this expectation applies not only to mobile voice telephony, but to PTT and SMS as well, and that extending automatic roaming obligations to these services will serve the public interest.<sup>44</sup> The record before the Commission contains substantial evidence supporting this conclusion<sup>45</sup> – including evidence as specific as letters submitted into the record from SouthernLINC Wireless enterprise customers describing their need for

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<sup>41</sup> / Petition at 4 – 5.

<sup>42</sup> / Petition at 5.

<sup>43</sup> / *Roaming Order* at ¶ 27.

<sup>44</sup> / *Roaming Order* at ¶¶ 54 – 55.

<sup>45</sup> / *See, e.g., Roaming Order* at ¶ 53 and the record cited therein.

access to PTT roaming<sup>46</sup> – thus belying Sprint Nextel’s assertion that “no such record evidence exists.”<sup>47</sup>

### **E. Competition and Market Conditions**

According to Sprint Nextel, the Commission adopted automatic roaming obligations for PTT services “without any demonstration of a market failure harming consumers.”<sup>48</sup> Again, Sprint Nextel either misunderstands or ignores not only the substantial record of this proceeding, but the text of the *Roaming Order* itself. Moreover, Sprint Nextel disregards its own well-documented behavior with respect to PTT roaming.

Throughout this and other proceedings, SouthernLINC Wireless has demonstrated to the Commission that the long-standing and ongoing refusal of Sprint Nextel (in both its pre- and post-merger forms) to make access to PTT roaming available to customers of SouthernLINC Wireless – even though it provides this service to customers of foreign IDEN carriers – clearly shows market failure that directly harms US consumers.<sup>49</sup> This record evidence is explicitly discussed and cited in the *Roaming Order*.<sup>50</sup>

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<sup>46</sup> / See Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Nov. 28, 2005), Attachment E; Reply Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Jan. 26, 2006), Attachment C.

<sup>47</sup> / Petition at 5.

<sup>48</sup> / Petition at 6.

<sup>49</sup> / See, e.g., Comments and Reply Comments of SouthernLINC Wireless in WT Docket No. 05-265 (filed Nov. 28, 2005, and Jan. 26, 2006, respectively); *Applications of Nextel Communications, Inc. and Sprint Corporation*, WT Docket No. 05-63, Comments of SouthernLINC Wireless and Reply of SouthernLINC Wireless to Joint Opposition of Sprint and Nextel (filed March 30, 2005, and April 18, 2005, respectively); *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0002444650, 0002444656, 0002456809, Petition of SouthernLINC Wireless and Reply of SouthernLINC Wireless to Oppositions of Sprint Nextel and Nextel Partners (filed March 29, 2006, and April 17, 2006, respectively); See

The record also includes substantial evidence presented by numerous other regional and rural carriers demonstrating that market forces alone have been insufficient to make access to automatic roaming available to all wireless consumers.<sup>51</sup> In recognition of this record, the Commission stated in the *Roaming Order*, “We are mindful of the ongoing complaints by small, regional, and rural carriers against the nationwide carriers that, *under current market conditions*, it is getting more difficult for small and rural carriers to obtain access to nationwide carriers’ networks through automatic roaming agreements.”<sup>52</sup> The record before the Commission further includes expert reports prepared by leading economists regarding the state of competition in the market for wholesale automatic roaming services.<sup>53</sup>

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*also* Reply Comments of SouthernLINC Wireless for the *Tenth CMRS Competition Report*, WT Docket No. 05-71 (filed April 12, 2005).

<sup>50</sup> / See, e.g., *Roaming Order* at ¶¶ 28, 53.

<sup>51</sup> / See generally Comments and Reply Comments of Leap Wireless (filed Nov. 28, 2005, and Jan. 26, 2006, respectively); Reply Comments of Centennial Communications (filed Jan. 26, 2006); Comments and Reply Comments of MetroPCS (filed Nov. 28, 2005, and Jan. 26, 2006, respectively); Comments of the Rural Telecommunications Group (filed Nov. 28, 2005, and Jan. 26, 2006, respectively); Joint Reply Comments of RTG and OPASTCO (filed Jan. 26, 2006); Joint Comments of AIRPEAK Communications and Airtel Wireless (filed Nov. 28, 2005); Comments and Reply Comments of NTCH, Inc. (filed Nov. 28, 2005, and Jan. 26, 2006, respectively); Reply Comments of Unicom, Inc. (filed Dec. 20, 2005); Reply Comments of SLO Cellular d/b/a Cellular One of San Luis Obispo (filed Jan. 26, 2006).

<sup>52</sup> / *Roaming Order* at ¶ 28 (emphasis added) (citing generally RTG Comments at 10; Leap Reply Comments at 7; Airpeak Comments at 6-8; SouthernLINC Wireless Comments at 11-15).

<sup>53</sup> / See, e.g., Reply Comments of Leap Wireless, WT Docket No. 05-265, Attachment A (filed Jan. 26, 2006) (economic report of Dr. David S. Sibley, Professor of Economics at the University of Texas at Austin and the former chief economist for the US Department of Justice’s Antitrust Division); Comments and Reply Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Nov. 28, 2005, and Jan. 26, 2006, respectively) (economic reports of Dr. R. Preston McAfee, Professor of Business, Economics and Management, California Institute of Technology); Comments and Reply

Sprint Nextel also incorrectly asserts that the Commission has “effectively eliminated PTT geographic coverage as a basis for competition” between Sprint Nextel and SouthernLINC Wireless.<sup>54</sup> In fact, the Commission’s actions regarding automatic roaming actually ensure that geographic coverage will continue to serve as a significant basis for competition that carriers can use to differentiate themselves from their competitors.

Contrary to Sprint Nextel’s contention, automatic roaming will not provide any carrier with “the identical nationwide footprint” as Sprint Nextel or any other carrier. For example, roaming would not enable SouthernLINC Wireless to establish any retail presence to compete for consumers who live outside of its own network coverage area. In addition, while automatic roaming will enable a SouthernLINC Wireless customer traveling through Chicago to have access to voice, PTT, and other mobile wireless services, SouthernLINC Wireless would not have any control regarding the quality of the network, service, or coverage the customer is experiencing in Chicago or anywhere else the customer is roaming. Finally, even customers who live within SouthernLINC Wireless’ network coverage area may find themselves outside of the coverage area so often that the roaming charges they are incurring make switching to a carrier with broader geographic coverage an attractive option.

All of these factors demonstrate that, while automatic roaming obligations will serve to provide all US consumers with seamless connectivity to wireless voice, PTT, and SMS services as they travel outside their home network service areas, geographic

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Comments of Leap Wireless, WT Docket No. 05-265 (filed Nov. 28, 2005, and Jan. 26, 2006, respectively) (economic analyses by ERS Group).

<sup>54</sup> / Petition at 7.

coverage will nevertheless continue to be an important basis for competition among wireless service providers. The Commission's action in adopting the automatic roaming rule thus strikes an appropriate balance between ensuring that important public interest needs are met while maintaining the competitive dynamics of the wireless market.

**F. This Proceeding is the Appropriate Forum for Deciding This Issue**

Sprint Nextel argues in another bout of tortured logic that, because GSM and CDMA are “not close substitutes” for iDEN PTT, the Commission's PTT roaming mandate in effect only applies to iDEN-based carriers like Sprint Nextel and SouthernLINC Wireless.<sup>55</sup> Sprint Nextel claims – without further explanation or citation to any legal authority – that this is like a “bill of attainder.”<sup>56</sup> However, the fact that carriers' PTT services may or may not be close substitutes makes no difference in the application of the automatic roaming rule to PTT. Multiple carriers provide PTT service,<sup>57</sup> and all are covered under the Commission's rule.

Finally, Sprint Nextel's position that the extension of the automatic roaming rule to PTT “addresses a specific dispute” rather than an industry-wide issue ironically contradicts the very position Sprint Nextel itself so strongly advocated during the Commission's reviews of its mergers in 2005 and 2006. For example, in the *Sprint/Nextel Merger Order*, the Commission observed:

Specifically, SouthernLINC Wireless contends that: Nextel has refused to interconnect its subscribers for PTT and dispatch, while providing interconnection for these services to Nextel Partners' subscribers; Nextel charges SouthernLINC Wireless roaming rates that are much higher than

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<sup>55</sup> / Petition at 2.

<sup>56</sup> / Petition at 2.

<sup>57</sup> / See, e.g., *Eleventh CMRS Competition Report*, 21 FCC Rcd at 10972-73 ¶ 64; See also Section II.B. of these comments, *supra*.

the rates other carriers pay; and Nextel partners has refused to enter into roaming agreements with SouthernLINC Wireless. *Sprint and Nextel believe that these requests should be addressed in a rulemaking proceeding on roaming rather than in this license transfer proceeding.*<sup>58</sup>

The Commission accepted the Sprint/Nextel argument and accordingly held that, “given the broad scope of the concerns raised – many of which seem to call for a reevaluation of the Commission’s roaming rules and policies – they are more appropriately addressed in the context of a rulemaking proceeding.”<sup>59</sup>

The following year, as the Commission was reviewing Sprint Nextel’s rollup of Nextel Partners, SouthernLINC Wireless again raised the issue of roaming, including roaming for PTT services.<sup>60</sup> In response, Sprint Nextel argued:

SouthernLINC is obviously aware that the issues raised in its Petition are being addressed in a comprehensive, ongoing rulemaking proceeding devoted exclusively to CMRS roaming obligations. Since the beginning of the pleading cycle in that proceeding, SouthernLINC has made these same arguments in filings totaling almost 250 pages. *That rulemaking is the appropriate forum for addressing SouthernLINC’s allegations and arguments*; in that proceeding, a larger number of affected parties can make their views known, and the Commission can ensure that its actions serve consumers and do not adversely affect competition among wireless carriers. SouthernLINC provides no legitimate reason why the Commission should not resolve these roaming issues through that rulemaking process.<sup>61</sup>

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<sup>58</sup> / *Sprint/Nextel Merger Order*, 20 FCC Rcd at 104011-12 ¶ 125 (emphasis added).

<sup>59</sup> / *Id.*, 20 FCC Rcd at 14013 ¶ 128.

<sup>60</sup> / *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0002444650, 0002444656, 0002456809, Petition of SouthernLINC Wireless (filed March 29, 2006).

<sup>61</sup> / *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0002444650, 0002444656, 0002456809, Sprint Nextel Opposition to Petition of SouthernLINC Wireless (filed April 4, 2006) at 6 – 7 (emphasis added) (internal citations omitted).

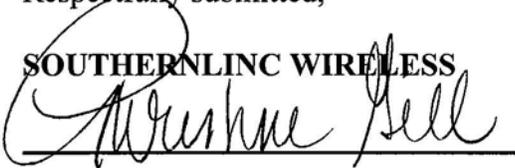
Now that the use of this very rulemaking proceeding – as advocated by Sprint Nextel – has resulted in a finding that it disagrees with, Sprint Nextel has changed its mind and argues that this proceeding was an inappropriate forum for addressing these issues.

### **III. CONCLUSION**

As demonstrated above, the Commission reasonably found that it is in the public interest to extend the scope of its automatic roaming obligations to include PTT services and features – a determination that is based on substantial record evidence, as well as the Commission’s extensive experience and expertise. Sprint Nextel’s arguments to the contrary are vague and unfounded and lack any support in law, Commission precedent, or the record of this proceeding. Accordingly, to the extent Sprint Nextel requests reconsideration of the Commission’s decision to include PTT within the scope of its automatic roaming obligations, its Petition should be denied.

**WHEREFORE, THE PREMISES CONSIDERED**, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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Dated: November 6, 2007

**CERTIFICATE OF SERVICE**

I, Calvin Watson, do hereby certify that on this 6th day of November, 2007, a copy of the foregoing Opposition to Sprint Nextel's Petition for Reconsideration was submitted electronically through the Federal Communications Commission's Electronic Comment Filing System and served via Overnight Delivery upon the following:

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