

**Exhibit 1**

Velocita Wireless Holding Corp. (“Velocita”) and NCI 900 Spectrum Holdings, Inc. (“NCI 900”) (Velocita and NCI 900, collectively, “Applicants”), through their undersigned counsel hereby request authority to transfer control of Machine License Holding, LLC (“MLH” or “Licensee”) from Velocita to NCI 900. MLH holds experimental license WC2XUH which is the subject of this application. The Applicants include as Exhibit 2 to this application a copy of the public interest statement filed in connection with concurrently filed applications to transfer control of MLH’s SMR and private land mobile radio service licenses to NCI 900.

**EXHIBIT 2**

**DESCRIPTION OF TRANSACTION  
AND PUBLIC INTEREST STATEMENT**

**I. INTRODUCTION**

This application is one of a series of applications requesting Federal Communications Commission (“Commission”) consent to transfer control of Machine License Holding, LLC (“MLH”) from Velocita Wireless Holding Corp. (“Velocita”) to NCI 900 Spectrum Holdings, Inc., a wholly owned subsidiary of Sprint Nextel Corporation (collectively “Sprint Nextel”) (Velocita, MLH, and Sprint Nextel, collectively, “Applicants”). Velocita and certain of its shareholders have entered into a Stock Purchase Agreement (“Agreement”) pursuant to which Sprint Nextel has agreed to purchase 100% of the capital stock of Velocita, which is the majority owner of MLH, subject and contingent upon the satisfaction of various closing conditions, including the receipt of necessary FCC approvals.

By this application, the Applicants hereby request authority, pursuant to section 310(d) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> for approval of a transfer of control of all of MLH’s wireless licenses from Velocita to Sprint Nextel. The wireless licenses held by MLH include 104 Major Trading Area (“MTA”) licenses and site-based licenses in the 900 MHz Specialized Mobile Radio (“SMR”) service, and one private land mobile radio service license, WBZY345, which supports Velocita’s SMR operations (“Wireless Licenses”). In addition, MLH holds two other Commission

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<sup>1</sup> 47 U.S.C. § 310(d).

authorizations for which the parties are filing concurrently herewith (1) an application with the International Bureau to transfer control of MLH's international Section 214 authority, FCC File No. ITC-214-19990608-00327, and (2) an application with the Office of Engineering and Technology to transfer control of MLH's experimental license, WC2XUH.

As described below, the proposed transfer of control is consistent with the Commission's rules and policies, and will further the public interest. After the proposed transfer of control is consummated, Sprint Nextel expects to gradually transition the spectrum covered by the Wireless Licenses into its Sprint Nextel iDEN® network, which operates in the 800 and 900 MHz bands, while minimizing the impact of the transition on Velocita's network coverage or availability through a smooth migration of customers to other wireless networks. The addition of this 900 MHz spectrum will help Sprint Nextel implement the Commission's 800 MHz band reconfiguration in a manner that minimizes the risk of service disruption to Sprint Nextel's iDEN® customers and permits the reconfiguration process to move ahead without delay.

## **II. DESCRIPTION OF THE APPLICANTS**

### **A. Velocita Wireless Holding Corp., Transferor**

The Wireless Licenses are held by MLH, a Delaware limited liability company that is majority owned and controlled by Velocita.<sup>2</sup> Headquartered in Woodbridge, New Jersey, Velocita is a privately owned holding company which, through various wholly-

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<sup>2</sup> Specifically, 96.17% of the ownership interests of MLH are held by Velocita, which also serves as the company's sole Member. The remaining ownership interest of 3.83% is held by Velocita Acquisition LLC, a Delaware limited liability company that is a direct, 100% wholly owned subsidiary of Velocita.

owned operating subsidiaries, provides direct and wholesale two-way messaging and data services through a stand-alone, national wireless network operating in the 900 MHz band (896-901/935-940 MHz). Velocita's network covers approximately 93% of the U.S. business population in 492 metropolitan areas and 130 major airports. With respect to its licensed spectrum in the 900 MHz band, Velocita through MLH does not hold more than 1 MHz of MTA and site-based SMR spectrum in any given market.

**B. NCI 900 Spectrum Holdings, Inc., Transferee**

Sprint Nextel was formed by means of a merger between Sprint Corporation and Nextel Communications, Inc., a transaction that was approved by the FCC on August 8, 2005 and consummated on August 12, 2005.<sup>3</sup> Sprint Nextel is a publicly traded Kansas corporation with headquarters in Reston, Virginia.

Sprint Nextel offers a comprehensive range of wireless and wireline communications services to consumer, business, and government customers. It is the third largest provider of mobile telephony and related data services in the United States based on subscribership, with more than 44 million customers. It also provides long distance wireline services to individuals, businesses, and governmental entities, and operates a global Tier 1 Internet backbone.

Sprint Nextel provides digital wireless voice and data communications services using two distinct networks: one using Code Division Multiple Access ("CDMA") technology, and one using Integrated Digital Enhanced Network ("iDEN®") technology provided by Motorola, Inc. Together with its affiliates and roaming partners, Sprint

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<sup>3</sup> *Applications of Nextel Communications, Inc. and Sprint Corporation; For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005) ("*Sprint-Nextel Merger Order*").

Nextel uses its CDMA network to provide Personal Communication Service (“PCS”) in the 1.9 GHz band in over 350 metropolitan markets, reaching approximately 250 million people in all 50 states.<sup>4</sup> Sprint Nextel uses iDEN® technology to serve 297 of the top 300 U.S. markets. Operating on SMR licenses in the 800 MHz and 900 MHz bands, Sprint Nextel’s iDEN® network provides a comprehensive suite of advanced wireless services and features, including digital wireless mobile telephone service, Nextel® Nationwide Walkie-Talkie and Nextel® International Walkie-Talkie features, and such wireless data services as Internet access and short messaging. Currently, Sprint Nextel operates over 20,000 sites in the 800/900 MHz band.

### III. DESCRIPTION OF THE TRANSACTION

The transaction contemplates that Sprint Nextel will purchase 100% of the common stock of Velocita, thus acquiring 100% ownership and corporate control of MLH, the entity that holds the Commission licenses at issue in the transaction.<sup>5</sup>

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<sup>4</sup> As part of its 800 MHz band reconfiguration order, the Commission ordered license modifications that will give Sprint Nextel nationwide authority to operate in ten megahertz of contiguous spectrum at 1910-1915/1990-1995 MHz. *See Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 346 (2004) (“800 MHz R&O”). Sprint Nextel also holds Broadband Radio Service (“BRS”) licenses and leases spectrum from Education Broadband Service (“EBS”) licensees in the 2.5 GHz band.

<sup>5</sup> Concurrently herewith, Applicants are filing applications to transfer control of MLH’s international Section 214 and experimental licenses from Velocita to Sprint Nextel.

#### IV. QUALIFICATIONS OF APPLICANT

Sprint Nextel possesses the requisite “citizenship, character, financial, technical, and other qualifications” to hold the licenses involved in the instant transaction.<sup>6</sup> In the recent *Sprint-Nextel Merger Order*, the Commission found that Sprint and Nextel each met these qualifications.<sup>7</sup> Since that order, nothing has occurred to alter this finding. Sprint Nextel has not “made any representations or acted with a lack of candor in any of its proceedings before the Commission,” nor has it engaged in a “pattern of willful violations of the Communications Act or the Commission’s rules.”<sup>8</sup> In addition, Sprint Nextel has not engaged in or had judicial decisions against it for non-Commission-related misconduct relevant in deciding whether the transaction serves the public interest, convenience, or necessity including: “(1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.”<sup>9</sup> Finally, there are no proceedings pending at the Commission in which it has been alleged that Sprint Nextel is unfit to hold a Commission license. The Commission should find, therefore, that Sprint Nextel is qualified to hold the Wireless Licenses.

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<sup>6</sup> 47 U.S.C. § 308(b); *see also* 47 U.S.C. § 310(d) (requiring FCC to consider the applications as if the proposed transferee/assignee were applying for the licenses directly under section 308 of the Act).

<sup>7</sup> *Sprint-Nextel Merger Order* ¶ 25.

<sup>8</sup> *AT&T-Cingular Order* ¶ 48.

<sup>9</sup> *Id.* ¶ 47 (footnote omitted).

**V. THE PROPOSED TRANSACTION WILL FURTHER THE PUBLIC INTEREST BY FACILITATING 800 MHz BAND RECONFIGURATION**

The proposed transaction will provide Sprint Nextel and its affiliates with additional access to spectrum in the 900 MHz band without raising any anticompetitive concerns. As discussed further below, in order to provide additional spectrum to public safety and comply with the retuning requirements of the Commission's 800 MHz reconfiguration decision, Sprint Nextel will need to shift a substantial amount of traffic from the 800 MHz band. In the near term, Sprint Nextel is moving this traffic to the company's iDEN® network at 900 MHz, a band in which Sprint Nextel is currently experiencing some capacity constraints. Approval of the proposed transaction would help to ease these constraints by providing Sprint Nextel modest but important additional capacity in the 900 MHz band.

In the *800 MHz R&O*, the Commission took vitally important steps to improve public safety communications by remedying interference that endangers the lives of first responders operating 800 MHz public safety systems. The cornerstone of this 800 MHz band reconfiguration is the separation of public safety and other high-site licensees from low-site, high-density cellularized CMRS operations.<sup>10</sup> Implementing the *800 MHz R&O* will require numerous incumbent 800 MHz public safety and Business and Industrial and Land Transportation ("B/ILT") licensees to retune their systems to operate on the new band plan, with their retuning costs funded by Sprint Nextel.

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<sup>10</sup> See generally *800 MHz R&O* ¶ 2.



Significantly, under the Commission's decision, Sprint Nextel itself will undergo far more retuning and network reconfiguration than any other licensee. To provide sufficient "green space" and ensure a smooth retuning process for public safety operators and other incumbent 800 MHz licensees, Sprint Nextel will have to retune many of its 800 MHz facilities twice. While this multi-step reconfiguration process is designed to minimize disruption to public safety communications, it will place a significant strain on Sprint Nextel's operations. Over 50% of Sprint Nextel's iDEN® traffic is provided over channels below 817/862 MHz. During the transition to the new band plan, the Commission's reconfiguration decision will significantly reduce Sprint Nextel's access to many of these 800 MHz channels without providing it immediate replacement spectrum.

As a result, during this transition period Sprint Nextel will have to shift a substantial portion of its iDEN® traffic from the 800 MHz band to the 900 MHz band.<sup>11</sup> In order to maintain high-quality network performance and avoid service disruptions during this time, Sprint Nextel will have to continue building out its existing 900 MHz licenses and acquire additional 900 MHz spectrum.<sup>12</sup> Sprint Nextel's acquisition of even the small amount of spectrum at issue in the instant transaction (not more than 1 MHz in any market) would significantly enhance its ability to provide seamless service to its iDEN® customers during the band reconfiguration process.

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<sup>11</sup> *800 MHz R&O* ¶¶ 6, 147, 198.

<sup>12</sup> In the *800 MHz R&O*, the Commission acknowledged Sprint Nextel's urgent need for access to additional spectrum at 900 MHz during 800 MHz reconfiguration. In part to address this need, the Commission gave 900 MHz B/ILT licensees the flexibility to use their spectrum for CMRS operations, and to assign their licenses to other CMRS providers. *800 MHz R&O* ¶¶ 335-337. As a result, Sprint Nextel now has the opportunity to obtain additional spectrum in the 900 MHz band through secondary spectrum market transactions. *Id.* ¶¶ 6, 147, 198, 336.

Notably, within the near term, the 1.9 GHz spectrum that Sprint Nextel has received as part of 800 MHz band reconfiguration cannot be used for iDEN® operations.<sup>13</sup> The 1990-1995 MHz band segment is currently occupied by Broadcast Auxiliary Service (“BAS”) licensees; thousands of incumbent BAS systems currently operate in this band, and Sprint Nextel cannot operate on this spectrum until these incumbents are cleared. Under the Commission’s rules, this BAS band-clearing process is not scheduled for completion until September 7, 2007. In contrast, the 900 MHz spectrum covered by the instant transaction would afford Sprint Nextel additional spectrum to supplement and help support Sprint Nextel’s iDEN® operations during the course of 800 MHz reconfiguration, thereby helping to ensure a smooth transition to the new 800 MHz band plan.<sup>14</sup>

## **VI. THE PROPOSED TRANSACTION WILL HAVE NO ANTICOMPETITIVE EFFECTS**

The proposed transaction will have no anticompetitive effects in the highly competitive mobile telephony marketplace. The Commission has analyzed recent transactions using a single, combined market for mobile telephony that includes

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<sup>13</sup> Sprint Nextel is already using its PCS spectrum at 1.9 GHz for its CDMA operations, and this spectrum is therefore unavailable to support Sprint Nextel’s iDEN® service.

<sup>14</sup> Sprint Nextel does not anticipate that the use of the Wireless Licenses, which will be integrated into its operations gradually and over time, will have any near term impact on Velocita’s existing customer base. Following the transfer, Velocita will continue to honor its existing service contracts and customers will be given advance notice of any planned changes to the network that could be service affecting along with an opportunity to make alternative service arrangements with Sprint Nextel and/or another carrier.

interconnected mobile voice and mobile data services.<sup>15</sup> As the Commission has found, the combined market for mobile telephony currently enjoys “robust competition”<sup>16</sup> and includes “multiple [ ] carriers who have the ability to act as effective competitive constraints on the behavior of [Sprint Nextel.]”<sup>17</sup> The proposed transaction raises no competitive concerns within this market.

First, the transaction will not cause Sprint Nextel’s mobile telephony holdings in any relevant geographic market to exceed 70 MHz, one of the triggers that Commission has previously used to determine whether further scrutiny of a transaction’s impact on a particular market is needed. To the contrary, following closing, Sprint Nextel will continue to hold significantly less than that threshold in most of its markets.<sup>18</sup>

Second, Velocita’s Wireless Licenses do not exceed 1 MHz in any market. No one could plausibly contend that Sprint Nextel’s acquisition of an additional 1 MHz of 900 MHz spectrum in a market could have a material adverse effect on competition in that MTA.

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<sup>15</sup> See *Sprint-Nextel Merger Order* ¶¶ 38, 42; *AT&T-Cingular Order* ¶ 74 (2004).

<sup>16</sup> *Tenth Annual CMRS Competition Report*, FCC 05-173, ¶ 204 (Sept. 30, 2005) (“U.S. Consumers continue to benefit from robust competition in the CMRS marketplace.”); see also *id.* ¶¶ 116, 205 (“a wide variety of indicators of carrier conduct and market structure . . . show that competition in mobile telecommunications markets is robust.”).

<sup>17</sup> *Sprint-Nextel Merger Order* ¶ 184.

<sup>18</sup> Sprint Nextel’s spectrum holdings at 2.5 GHz are excluded from its market-by-market calculation of spectrum used for the provision of mobile telephony service. In the *Sprint-Nextel Merger Order*, the Commission stated that “BRS/EBS 2.5 GHz is not considered in this input market because 2.5 GHz is committed to non-mobile telephony uses currently and for the near-term future, due to the historical configuration of the band and the multi-year transition process needed to reconfigure the band.” *Sprint-Nextel Merger Order* ¶ 61.

Third, the transaction will have only a *de minimis* impact on Sprint Nextel's market share in the combined mobile telephony market. The Wireless Licenses are used for two-way messaging and data services and, therefore, due to the limited services, small amount of spectrum and relatively few customers nationwide, this transaction will not materially increase Sprint Nextel's share of the mobile telephony market. In addition, as the Commission has repeatedly found, Sprint Nextel will continue to face vigorous competition from numerous competitors throughout its licensed markets.

## **VI. CONCLUSION**

For the reasons stated above, the transfer of control of MLH's Wireless Licenses from Velocita to Sprint Nextel will comply with the Commission's rules and serve the public interest. Applicants respectfully request that the Commission grant the instant application as soon as possible.