

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Applications of Nextel Communications, Inc. and Sprint Corporation |) | WT Docket No. 05-63 |
| |) | |
| For Consent to Transfer Control of Licenses and Authorizations |) | |
| |) | |
| File Nos. 0002031766, <i>et al.</i> |) | |

MEMORANDUM OPINION AND ORDER

Adopted: August 3, 2005

Released: August 8, 2005

By the Commission: Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

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I. INTRODUCTION

1. In this Order, we consider applications filed by Nextel Communications, Inc. (“Nextel”) and Sprint Corporation (“Sprint”) (collectively, the “Applicants”) for consent to transfer control of all licenses and authorizations held directly and indirectly by Nextel to Sprint.¹ The Nextel licenses and authorizations include Specialized Mobile Radio Service (“SMR”) licenses in the 800 and 900 MHz bands and licenses in the 1.9 GHz band that enable the

¹ Applications of Nextel Communications, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, ULS File No. 0002031766, *et al.* (filed February 8, 2005) (“Applications”).

provision of mobile telephone and related data services, licenses in the Broadband Radio Service (“BRS”) in the 2150-2162 MHz band and in the 2500-2690 MHz band, spectrum leases in the BRS in the 2150-2162 MHz band and 2500-2690 MHz band, and spectrum leases in the Educational Broadband Service (“EBS”) in the 2500-2690 MHz band.² The Applicants contemplate that the operations and assets of Nextel and Sprint would be combined, and that the merged entity would continue to provide its services in these bands under both the Nextel and Sprint brand names. Under the license transfer application before us, wireless affiliates of Nextel and Sprint would not become part of the merged entity.³

2. The proposed merger of Nextel’s SMR and 1.9 GHz licenses used in providing mobile telephony services with Sprint’s broadband Personal Communications Service (“PCS”) licenses would combine the licenses and operations of two large national wireless carriers that have overlapping coverage areas providing mobile telephony services throughout much of the United States. In this instance, the number of large nationwide carriers providing these services would be reduced from five to four. Because the proposed merger would combine largely overlapping mobile telephony coverage and services, these applications require us to examine the potential consequences of a merger that is largely horizontal in nature. In addition, the proposed combination of Nextel’s and Sprint’s holdings of BRS licenses and EBS leases in the 2.5 GHz band would result in geographic overlap in some parts of the country, while there would be significant areas of non-overlap in many other parts. Thus, the proposal to bring these BRS/EBS holdings together requires us to examine the potential consequences both of increasing the amount of BRS/EBS bandwidth controlled in certain markets, and of expanding the total geographic footprint covered by these licenses and leases.

3. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Communications Act”), we must determine whether the Applicants have demonstrated that the proposed transfers would serve the public interest, convenience, and necessity.⁴ Based on the record before us, and as discussed more fully below, we find that the transaction meets this standard. We recognize that this transaction will represent a second major step in consolidation of nationwide mobile operators in the U.S. within the past year, and that it will increase concentration in many markets based on the firms’ current shares of subscribers. Based on the record as a whole and our analysis, we conclude that the transaction is unlikely to result in public interest harm in mobile telephony markets. We make this finding primarily because we find that, in the post-merger environment, there will be a continuing presence of multiple other substantial carriers in each overlap market with the capacity to add subscribers and the ability to add capacity. As a result, we believe this transaction is unlikely to result in collusive behavior or create “unilateral” market power on the part of the merged firm. We also find that there are no local markets where post-merger conditions would require a divestiture remedy. Sprint and Nextel have been the third, fourth, or later entrants into individual markets. Finally, we find that public interest benefits should result from this transaction and flow to consumers, including improved service quality and broader deployment of the next generation of

² The term “2.5 GHz band” or “2500-2690 MHz” used throughout this Order includes both the 2150-2162 MHz band and 2500-2690 MHz band.

³ Application, Public Interest Statement at 14-17.

⁴ 47 U.S.C. §§ 214(a), 310(d).

advanced wireless services, despite the fact that the two networks will not be tightly integrated in the near term.

4. With regard to the BRS and EBS licenses specifically, our analysis shows that this transaction is unlikely to result in public interest harm in the 2.5 GHz band. We believe that regardless of whether the efficient future use of the 2.5 GHz spectrum ultimately turns out to be mobile, portable, or fixed service, it is unlikely that this transaction will have a negative impact on competition. We envision that, under any of these scenarios, by the time this spectrum capacity is put to use, sufficient other spectrum should be available so that no undue market power will be conferred on the combined entity (“Sprint Nextel”).

II. BACKGROUND

A. Description of the Applicants

1. Nextel Communications, Inc.

5. Nextel is a publicly-traded Delaware corporation headquartered in Reston, Virginia.⁵ Nextel operates primarily SMR licenses in the 800 and 900 MHz bands and provides digital wireless voice and data communications services over its all-digital network based on Integrated Digital Enhanced Network (“iDEN”) technology provided by Motorola, Inc.⁶ Nextel offers a bundled service that provides a customer with interconnected mobile voice along with trunked dispatch service (marketed under the brand name “Direct Connect”) that allows instant, real-time conferencing on a one-to-one or one-to-many basis.⁷ Customers can also subscribe to other optional services, including paging, text/numeric messaging, and wireless Internet access.⁸ Nextel also holds BRS licenses and leases excess capacity from EBS licensees in the 2.5 GHz band.⁹ As a result of the Commission’s 800 MHz rebanding plan, the Commission modified certain Nextel licenses to give Nextel a nationwide authority to operate in ten megahertz of contiguous spectrum in the 1.9 GHz band.¹⁰

6. In 1999, Nextel sold some of its 800 MHz SMR licenses to Nextel Partners, Inc. (“Nextel Partners”) in exchange for a minority ownership interest in the company. Nextel Partners is also building out an iDEN network and Nextel assists Nextel Partners in obtaining

⁵ Nextel Communications, Inc., Form 10-K (filed Mar. 15, 2005) (“Nextel 10-K”), available at <http://www.sec.gov/Archives/edgar/>.

⁶ See 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, *Third Report*, 13 FCC Rcd 19746, 19753 (1998) (“*Third Competition Report*”); Nextel 10-K at 1.

⁷ See Applications to Assign Wireless Licenses from Chadmoore Wireless Group to Various Subsidiaries of Nextel Communications, Inc., WT Docket No. 01-193, *Memorandum Opinion and Order*, 16 FCC Rcd 21105 ¶ 2 (2001) (“*Nextel-Chadmoore Order*”).

⁸ Direct Connect[®] provides trunked dispatch customers with an expanded dispatch service area and higher voice quality and extra security than analog trunked dispatch. *Id.* at 21106 & n.4.

⁹ See *infra* Section V.B.1.a. In a small number of cases, Nextel is the licensee of EBS stations pursuant to the “wireless cable” exception to the EBS eligibility rules. See 47 C.F.R. 27.1201(c)(1).

¹⁰ Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, 19 FCC Rcd 14969 (2004) (“*800 MHz Report and Order*”).

terms similar to those Nextel receives from vendors for equipment and services.¹¹ Nextel Partners provides digital wireless telecommunications services using its own iDEN network under the Nextel brand name in mid-sized and rural U.S. markets.¹² As of December 31, 2004, Nextel owned about thirty-two percent of the outstanding common stock of Nextel Partners and about eighteen percent of the outstanding common stock of NII Holdings, Inc., which provides wireless communications services primarily in selected Latin American markets. Also, as of December 31, 2004, Legg Mason, Inc. owned 10.37 percent of Nextel shares outstanding.¹³ No other investor holds more than a ten percent ownership interest in Nextel.

7. Today, Nextel is the fifth largest provider of mobile telephony service in the United States based on subscribership.¹⁴ As of December 31, 2004, Nextel provided service to over 16.2 million subscribers, which consisted of 15.0 million subscribers of Nextel-branded service and 1.2 million subscribers of Boost Mobile, a Nextel affiliate, and reported \$13.4 billion in operating revenues for 2004.¹⁵ Nextel together with its affiliate, Nextel Partners, currently utilize the iDEN technology to serve 297 of the top 300 U.S. markets where about 260 million people live or work.¹⁶

2. Sprint Corporation

8. Sprint is incorporated under the laws of the state of Kansas and headquartered in Overland Park, Kansas.¹⁷ Sprint holds PCS and BRS licenses.¹⁸ Sprint uses Code Division Multiple Access protocol (“CDMA”) throughout its wireless network.¹⁹ Sprint has also deployed a 1xRTT voice and data network which provides wireless access to the internet and other data services.²⁰ In July 2005, Sprint announced that it had begun rollout of high-speed wireless data services using Evolution Data Optimized (“EV-DO”) technology.²¹ Sprint provides wireline long distance and local telecommunications services.²² Sprint also holds BRS licenses and leases excess capacity from EBS licensees in the 2.5 GHz band.²³

¹¹ *Id.*

¹² Nextel 10-K at 15; *Ninth Competition Report*, 19 FCC Rcd at 20689 n.165.

¹³ See Yahoo Finance, Quotes & Info, Nextel Communications, Inc. (NXTL) at <http://finance.yahoo.com/q/mh?s=NXTL>, (visited June 8, 2005).

¹⁴ *Ninth Competition Report*, Table 4 at Appendix A, A-8.

¹⁵ Nextel 10-K at 1.

¹⁶ *Id.*

¹⁷ Sprint Corporation, Form 10-K, at 2 (filed Mar. 11, 2005) (“Sprint 10-K”), available at <http://www.sec.gov/Archives/edgar/data>.

¹⁸ Application, Exhibit 1 at 13.

¹⁹ Application, Public Interest Statement at 11.

²⁰ *Id.* at 26.

²¹ *Sprint Begins Launch of EV-DO Wireless High-Speed Data Service*, News Release, Sprint, July 7, 2005.

²² *Id.* at 12.

²³ See *infra* Section V.B.1.a. In a small number of cases, Sprint is the licensee of EBS stations pursuant to the “wireless cable” exception to the EBS eligibility rules. See 47 C.F.R. 27.1201(c)(1).

9. The Sprint network of operations consists of Sprint PCS and independent affiliates.²⁴ Sprint PCS is the subsidiary of Sprint Corporation that provides wireless telephony service.²⁵ Each of the affiliates has an agreement with Sprint PCS to use the latter's PCS licenses to deploy CDMA technology and Sprint PCS-branded service in specific areas of the country.²⁶ In return, Sprint PCS receives a percentage of the affiliates' local service revenue.²⁷ In addition, Sprint PCS performs back-office tasks for most of its affiliates, including billing and customer service.²⁸ Recently, Sprint has renegotiated these arrangements with some of its affiliates, responding to disputes with, as well as the financial difficulties of, certain affiliates.²⁹ The amended agreements cover approximately forty percent of the customers served by all affiliates.³⁰

10. Currently, Sprint is the third largest provider of mobile telephone voice and related data services in the United States in terms of subscribership.³¹ Sprint PCS had 24.7 million customers as of December 31, 2004: 17.8 million direct, postpaid subscribers, 3.2 million through affiliates, and 3.7 million wholesale subscribers.³² Sprint reported \$14.6 billion in revenues for 2004.³³ Sprint's CDMA network is now available in 99 percent of the major metropolitan areas in forty-eight states, the Virgin Islands, and Puerto Rico. Sprint, together with third party affiliates, operates PCS systems in over 350 metropolitan markets, including the 100 largest U.S. metropolitan areas, and reaches approximately 250 million people.³⁴ Sprint has been able to increase its coverage area by entering into roaming agreements with various carriers throughout the United States.³⁵

B. Description of Transaction

11. On December 15, 2004, Sprint and Nextel entered into an agreement for a merger to combine operations and assets valued at approximately \$70 billion.³⁶ Upon consummation of the merger, Nextel would be merged into S-N Merger Corp, a wholly owned subsidiary of

²⁴ The Applicants stated that Sprint had relationships with twelve independent affiliates. See Application, Public Interest Statement at 17. An Informal Request for Commission Action by one of these affiliates, US Unwired, Inc., ("US Unwired") is addressed below. See *infra* Section V.C.2.

²⁵ Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc. to AT&T Corp., CS Docket No. 98-178, *Order*, 17 FCC Rcd 8985 ¶ 2 (1998).

²⁶ See *Ninth Competition Report*, 19 FCC Rcd at 20629.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Ninth Competition Report*, 19 FCC Rcd at 20630.

³¹ *Id.*, Table 4 at Appendix A, A-8.

³² Sprint 10-K at 34.

³³ *Id.* at 4.

³⁴ *Id.* at 32.

³⁵ *Id.* at 3.

³⁶ Application, Public Interest Statement at 1.

Sprint, and Sprint's name would be changed to Sprint Nextel Corporation ("Sprint Nextel").³⁷ After closing, the merged company intends to spin off its incumbent local exchange carrier ("ILEC") assets to its shareholders.³⁸ As currently planned, the merged entity's executive headquarters would reside in Reston, Virginia, and its operational headquarters would be in Overland Park, Kansas.³⁹ Sprint Nextel will be led by a board of directors drawn equally from the pre-merger boards of the two companies. The merger would be achieved through a stock-for-stock transaction with Nextel shareholders receiving 1.3 shares of Sprint common stock and \$.50 in cash for each Nextel common share. The actual stock/cash allocation is subject to adjustment in order to facilitate the spin-off of Sprint's local telecommunications business on a tax-free basis, and will be determined at the time of the merger. The equity interests in Sprint and Nextel are being valued equally in the merger, and the stock/cash allocations in the Merger Agreement are designed so that Nextel's existing shareholders will own slightly less than 50 percent of Sprint's common stock.⁴⁰

12. The Applicants' respective current spectrum holdings that are used in the provision of mobile telephony services are set out in detail in the Application.⁴¹ Nextel currently holds up to 14 megahertz in portions of the 800 MHz band in each of the 493 Basic Trading Areas ("BTAs")⁴², and as much as 4.75 megahertz in portions of the 900 MHz band.⁴³ In addition, when the Commission's 800 MHz Re-Banding Plan is considered,⁴⁴ Nextel holds 10 megahertz of spectrum in the 1.9 GHz band in each of the 493 BTAs. Sprint currently holds broadband PCS licenses in 490 BTAs,⁴⁵ and its spectrum aggregation ranges up to 40 megahertz. As a result of this transaction, the merged entity would hold spectrum involving these licenses in all of the 493 BTAs, with overlaps in every BTA except Guam, American Samoa, and the Northern Mariana Islands.⁴⁶

³⁷ Application, Attachment A to Public Interest Statement at 2.

³⁸ Application, Public Interest Statement at 10.

³⁹ *Id.*

⁴⁰ Application, Public Interest Statement at 1-2 & n.1; *see also* Application, Attachment A at 2, 6.

⁴¹ *See* Application, Attachments E and J to Public Interest Statement.

⁴² Basic Trading Areas ("BTAs") are Material Copyright (c) 1992 Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company through an agreement with the Federal Communications Commission. BTAs are geographic areas drawn based on the counties in which residents of a given BTA make the bulk of their shopping goods purchases. Rand McNally's BTA specification contains 487 geographic areas covering the 50 states and the District of Columbia. For its spectrum auctions, the Commission added additional BTA-like areas for: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayaguez/Aguadilla-Ponce, Puerto Rico; and the U.S. Virgin Islands. *See Ninth Competition Report*, 19 FCC Rcd at 20606 n.27.

⁴³ *See* Application, Attachment J to Public Interest Statement.

⁴⁴ *See* Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, 19 FCC Rcd 14969 (2004); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004).

⁴⁵ All BTAs except Guam, American Samoa, and the Northern Mariana Islands. *See* Application, Attachment F to Public Interest Statement.

⁴⁶ *Id.*

13. With regard to the Applicants' current spectrum holdings (through licenses and spectrum leases) in the 2.5 GHz band, Nextel holds spectrum rights in this band in 281 BTAs; on average, 35.7 megahertz is licensed and 53.7 megahertz is leased.⁴⁷ Sprint, in turn, holds spectrum rights in 190 BTAs, of which, on average, 26.8 megahertz is licensed and 57.7 megahertz is leased.⁴⁸ Combining Sprint's and Nextel's holdings in the 2.5 GHz band would involve overlap of their existing licenses and leases in eighty-five BTAs.⁴⁹

C. Application and Review Process

1. Commission Review

14. On February 8, 2005, pursuant to section 310(d) of the Communications Act,⁵⁰ Sprint and Nextel filed: 33 applications seeking consent to the proposed transfer of control of licenses held by Nextel to Sprint; three applications for consent to transfer control of *de facto* lease authorizations from Nextel to S-N Merger Corp.; two applications for consent to transfer control of Satellite Earth Station authorizations from Nextel to Sprint; 13 applications for consent to transfer control of Cable Television Relay Service licenses from Nextel to Sprint; and five applications for consent to transfer control of Part 5 Experimental Radio Service authorizations from Nextel to Sprint. Sprint and Nextel also filed one application for transfer of control of Nextel's international section 214 authorization to Sprint.⁵¹

15. The Applicants assert that approval of the proposed transaction is in the public interest for several reasons.⁵² For instance, the Applicants contend that the merged entity would combine companies with complementary strengths and make possible a richer set of products, services, and features in the future. Customers who need wireless broadband capabilities would be more interested in the CDMA service available on Sprint's network and handsets.⁵³ Customers who prefer the robust, instant-communication push-to-talk functionality of Direct Connect would be more attracted to Nextel's iDEN network and handsets.⁵⁴ The Applicants also contend that the merger would result in a number of technical benefits and efficiencies and lead to improved service quality and coverage. The Applicants also assert that the proposed merger would accelerate the deployment of wireless interactive multimedia services ("WIMS") using the 2.5 GHz band. Finally, the applicants assert that the merger would benefit public safety communications and state that the merged entity will comply with Nextel's obligations under the Commission's 800 MHz rebanding plan.⁵⁵

⁴⁷ Application, Public Interest Statement at 47.

⁴⁸ *Id.*

⁴⁹ *Id.* at 48.

⁵⁰ 47 U.S.C. § 310(d).

⁵¹ See Nextel Communications and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, *Public Notice*, 20 FCC Rcd 4119, 4120-4122 (2005) ("*Comment Public Notice*").

⁵² Attachment, Public Interest Statement at 22-63.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 57-64.

16. On February 16, 2005, the Wireless Telecommunications Bureau (“Bureau”) released a protective order under which third parties were allowed to review confidential or proprietary documents submitted by the Applicants.⁵⁶ On February 28, 2005, the Commission released a Public Notice seeking public comment on the proposed transaction.⁵⁷ In response to the Comment Public Notice, parties filed seven pleadings that were styled petitions to deny the applications and 38 comments during the pleading cycle.⁵⁸

17. Community Technology Centers’ Network (“CTC Net”), Consumer Federation of America/Consumers Union (“CFA/CU”), and NY3G Partnership contend that the Commission should deny this license transfer application because the merged entity would hold an excessive amount of BRS/EBS spectrum nationwide and this would result in spectrum warehousing, delays in service launch, and a lack of service and competitive prices.⁵⁹ Duncan, Preferred Communications, and the Safety and Frequency Equity Competition (“SAFE”) Coalition argue that further consolidation in the market for mobile telephony voice and data services would exacerbate the alleged competitive harms that the Commission’s rebanding plan caused non-Nextel SMR licensees who hold Economic Area (“EA”) and site licenses.⁶⁰ In its pleadings, the New Jersey Division of the Ratepayer Advocate contends that reduction of the number of nationwide mobile telephony carriers from five to four would reduce the availability of roaming services to rural customers.⁶¹ It also argues that the amount of BRS/EBS spectrum held or leased by the merged entity would create a barrier to entry for others who would want to provide WIMS.⁶²

18. On April 29, 2005, Bureau staff requested additional information from the Applicants (“Information Request”).⁶³ The Applicants’ responses to the Information Requests

⁵⁶ Applications for the Transfer of Control of Licenses and Authorizations from Nextel Services, Inc. and Its Subsidiaries to Sprint Corporation; Protective Order, 20 FCC Rcd 3607 (2005).

⁵⁷ *Comment Public Notice*, 20 FCC Rcd at 4119. The Comment Public Notice set due dates of March 30, 2005 for Petitions to Deny, April 11, 2005 for Oppositions, and April 18, 2005, for Replies. *See id.* at 4123.

⁵⁸ For the reasons we discuss, *infra*, we find that NY3G Partnership and the New Jersey Division of the Ratepayer Advocate pleadings did not comply with the requirements, under section 309(d)(1) of the Communications Act, for the filing of a petition to deny. We nevertheless address those pleadings in the applicable sections of this Order. *See* Sections V.B.1.a. and V.A.6. The parties that filed formal pleadings in this proceeding are noted in Appendix A. In addition to those formal pleadings, we have received informal comments through *ex parte* submissions. *See* Appendix A. All pleadings and comments are available on the Commission’s Electronic Comment Filing System (“ECFS”) website at www.fcc.gov/cgb/ecfs/.

⁵⁹ CTC Net Petition to Deny at 7; CFA/CU Petition to Deny at 7; NY3G Partnership Petition to Deny at 3.

⁶⁰ Duncan Petition to Deny at 3; Preferred Communications Petition to Deny at 9; SAFE Coalition Petition to Deny at 5-9.

⁶¹ Ratepayer Advocate Reply at 3-4.

⁶² *Id.* at 5.

⁶³ Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Larry Krevor, Vice-President, Government Affairs, Nextel Communications, Inc. (April 29, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Vonya McCann, Senior Vice-President, Federal External Affairs, Sprint Corporation (April 29, 2005).

are included in the record.⁶⁴ On May 6, 2005, Commission staff requested data from the Applicants and from Nextel Partners, Cingular Wireless Corp. (“Cingular”), Verizon Wireless, LLC (“Verizon Wireless”), T-Mobile, ALLTEL Corporation (“ALLTEL”), Western Wireless Corp., and Southern LINC Wireless.⁶⁵ The responses to the Data Requests are included in the record.

2. Department of Justice Review

19. The Antitrust Division of the U.S. Department of Justice (“DOJ”) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.⁶⁶ The Antitrust Division’s review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. On August 3, 2005, the Antitrust Division closed its investigation of the Sprint-Nextel merger without taking any enforcement action.⁶⁷

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

20. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control of Nextel’s licenses and authorizations to Sprint will serve the public interest,

⁶⁴ On May 20, 2005, after considering a joint written request from the Applicants, the Commission released another protective order to provide enhanced protection for a portion of the documents that the applicants believed to contain competitively sensitive business information and should not be shared with in-house counsel. *See* Applications for the Transfer of Control of Licenses and Authorizations from Nextel Services, Inc. and Its Subsidiaries to Sprint Corporation; Second Protective Order, WT Docket No. 05-63, Order (DA 05-423), 20 FCC Rcd __ (2005); 2005 WL 516794. A number of the Applicants responses to the Initial Information Requests were filed subject to this Second Protective Order.

⁶⁵ Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Larry Krevor, Vice-President, Government Affairs, Nextel Communications, Inc. (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Vonya McCann, Senior Vice-President, Federal External Affairs, Sprint Corporation (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Don Manning, Vice-President, Nextel Partners (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to John T. Scott III, Deputy General Counsel, Regulatory Law, Verizon Wireless (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Thomas J. Sugrue, Vice President, Federal Government Affairs, T-Mobile USA, Inc. (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Glenn S. Rabin, Vice President, Federal Communications Counsel, ALLTEL Corporation (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Mark Rubin, Federal Government Affairs, Western Wireless Corporation (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Michael Rosenthal, Director of Regulatory Affairs, Southern LINC Wireless (May 6, 2005); Letter from Scott D. Delacourt, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission to David G. Richards, Chief Counsel, Federal Regulatory, Cingular Wireless, LLC (May 6, 2005).

⁶⁶ 15 U.S.C. § 18.

⁶⁷ DOJ, *Statement of the Department of Justice Antitrust Division on the Closing of the Investigation of Sprint Corporation's Acquisition of Nextel Communications Inc.* (press release) Aug. 3, 2005.

convenience, and necessity.⁶⁸ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁶⁹ other applicable statutes, and the Commission's rules.⁷⁰ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing process weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁷¹ The Applicants bear

⁶⁸ 47 U.S.C. §§ 214(a), 310(d).

⁶⁹ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See Applications of AT&T Wireless Services, Inc., Transferor, and Cingular Wireless, Corp., Transferee, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21543 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”); Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, Transferors, and VoiceStream Wireless Holding Company, Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM III PCS, LLC, Transferees, *Memorandum Opinion and Order*, 15 FCC Rcd 3341, 3345-46 ¶ 10 (2000) (“*VoiceStream-Omnipoint Order*”); Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 18025, 18030 ¶ 8 (1998) (“*WorldCom-MCI Order*”); *SBC-BellSouth Order*, 15 FCC Rcd at 25464 ¶ 12; Vodafone AirTouch, PLC, and Bell Atlantic Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16511-12 ¶ 12 (WTB, IB 2000) (“*Bell Atlantic-Vodafone Order*”).

⁷⁰ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40; Applications for Consent to the Assignment of Licenses Pursuant to section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in Possession, to Subsidiaries of Cingular Wireless LLC, *Memorandum Opinion and Order*, 19 FCC Rcd 2570, 2580-81 ¶ 24 (2004) (“*Cingular-NextWave Order*”); General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, *Memorandum Opinion and Order*, 19 FCC Rcd 473, 484 ¶ 16 (2004) (“*GM-News Corp. Order*”); Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002) (“*EchoStar-DirecTV HDO*”); AT&T Corp., British Telecommunications, PLC, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications, *Memorandum Opinion and Order*, 14 FCC Rcd 19140, 19150 ¶ 20 (1999) (“*AT&T Corp.-British Telecom. Order*”); Applications to Assign Wireless Licenses from WorldCom Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., *Memorandum Opinion and Order*, 19 FCC Rcd 6232, 6241 ¶ 23 (WTB, MB 2004) (“*Nextel-WorldCom Order*”); Application of TeleCorp PCS, Inc., Tritel, Inc., and Indus, Inc. and TeleCorp Holding Corp. II, L.L.C., TeleCorp PCS, L.L.C., ABC Wireless, L.L.C., Polycell Communications, Inc., Clinton Communications, Inc., and AT&T Wireless PCS, LLC, *Memorandum Opinion and Order*, 16 FCC Rcd 3716, 3721-22 ¶ 12 (WTB 2000); GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, 14045 ¶ 20, 14046 ¶ 22 (2002) (“*Bell Atlantic-GTE Order*”).

⁷¹ See, e.g., *Cingular-NextWave Order*, 19 FCC Rcd at 2580-81 ¶ 24 (2004); *GM-News Corp. Order*, 19 FCC Rcd at 483 ¶ 15; WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee, *Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26492 ¶ 12 (2003) (“*WorldCom Order*”); Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, *Memorandum Opinion and Order*, 17 FCC Rcd 23246, 23255 ¶ 26 (2002) (“*AT&T-Comcast Order*”); *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20574 ¶ 25; VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9789 ¶ 17 (2001) (“*Deutsche Telekom-VoiceStream Order*”); *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14045 ¶ 20, 14046 ¶ 22; *VoiceStream-Omnipoint Order*, 15 FCC Rcd at 3347 ¶ 12; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd at 19150 ¶ 20; *WorldCom-MCI Order*, 13 FCC Rcd at 18031 ¶ 10; *Nextel-WorldCom Order*, 19 FCC Rcd at 6241-42 ¶ 23; *SBC-BellSouth Order*, 15 FCC Rcd at 25464 ¶ 13, 25467 ¶ 18; *Bell Atlantic-Vodafone Order*, 15 FCC Rcd at 16512 ¶ 13, 16517 ¶ 25.

the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁷² If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing.⁷³

21. Our public interest evaluation encompasses the “broad aims of the Communications Act,”⁷⁴ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest. Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁷⁵ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁷⁶

22. In determining the competitive effects of the merger, our analysis is informed by, but not limited to traditional antitrust principles.⁷⁷ The Commission and DOJ each have

⁷² See, e.g., *Cingular-NextWave Order*, 15 FCC Rcd at 2581 ¶ 24; *GM-News Corp. Order*, 19 FCC Rcd at 483 ¶ 15; *AT&T-Comcast Order*, 17 FCC Rcd at 23255 ¶ 26; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20574 ¶ 25; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14046 ¶ 22; *VoiceStream-Omnipoint Order*, 15 FCC Rcd at 3347 ¶ 11; *SBC-BellSouth Order*, 15 FCC Rcd at 25464 ¶ 13; *Bell Atlantic-Vodafone Order*, 15 FCC Rcd at 16512 ¶ 13; Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee, *Memorandum Opinion and Order*, 14 FCC Rcd 3160, 3169 ¶ 15 (1999) (“*AT&T-TCI Order*”); *WorldCom-MCI Order*, 13 FCC Rcd at 18,031-32 ¶ 10.

⁷³ 47 U.S.C. § 309(e). See also *GM-News Corp. Order*, 19 FCC Rcd at 483 n.49; *AT&T-Comcast Order*, 17 FCC Rcd at 23255 ¶ 26; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20574 ¶ 25; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14231 ¶ 435; *WorldCom-MCI Order*, 13 FCC Rcd at 18139-40 ¶ 202. Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

⁷⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 41; *GM-News Corp. Order*, 19 FCC Rcd at 483 ¶ 16; *AT&T-Comcast Order*, 17 FCC Rcd at 23255 ¶ 27; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575 ¶ 26; Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee, CS Docket No. 99-251, *Memorandum Opinion and Order*, 15 FCC Rcd 9816, 9821 ¶ 11 (2000) (“*AT&T-MediaOne Order*”); *VoiceStream-Omnipoint Order*, 15 FCC Rcd at 3346-47 ¶ 11; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd at 19146 ¶ 14; *WorldCom-MCI Order*, 13 FCC Rcd at 18030 ¶ 9.

⁷⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 41; *AT&T-Comcast Order*, 17 FCC Rcd at 23,255 ¶ 27; *AT&T-MediaOne Order*, 15 FCC Rcd at 9821-22 ¶ 11; *WorldCom-MCI Order*, 13 FCC Rcd at 18031 ¶ 9.

⁷⁶ See *AT&T-Comcast Order*, 17 FCC Rcd at 23,255 ¶ 27; *AT&T-MediaOne Order*, 15 FCC Rcd at 9821-22 ¶ 11; *WorldCom-MCI Order*, 13 FCC Rcd at 18031 ¶ 9.

⁷⁷ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 42; *GM-News Corp. Order*, 19 FCC Rcd at 484 ¶ 17; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575 ¶ 26; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14046 ¶ 23; *AT&T-Comcast Order*, 17 FCC Rcd at 23256 ¶ 28; *AT&T-TCI Order*, 14 FCC Rcd at 3168-69 ¶ 14; *WorldCom-MCI Order*, 13 FCC Rcd at 18033 ¶ 13. See also *Satellite Business Systems*, 62 F.C.C.2d 997, 1088 (1977), *aff’d sub nom United States v. FCC*, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d (continued....)

independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of DOJ.⁷⁸ DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce.⁷⁹ The Commission, on the other hand, is charged with determining whether the transfer of licenses serves the broader public interest, as stated above. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁸⁰ In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.⁸¹ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁸²

23. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁸³ These conditions may include the divestiture of certain licenses along with associated facilities and customers, for example. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with law, that may be necessary to carry out the provisions of the Act.⁸⁴ Similarly, section 214(c) of the Act

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937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

⁷⁸ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 42; *GM-News Corp. Order*, 19 FCC Rcd at 484 ¶ 17; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575 ¶ 26; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14046 ¶ 23; *AT&T-Comcast Order*, 17 FCC Rcd at 23256 ¶ 28; *AT&T-TCI Order*, 14 FCC Rcd at 3169 ¶ 14; *WorldCom-MCI Order*, 13 FCC Rcd at 18033 ¶ 12.

⁷⁹ 15 U.S.C. § 18.

⁸⁰ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 42; *AT&T-Comcast Order*, 17 FCC Rcd at 23256 ¶ 28; *AT&T-MediaOne Order*, 15 FCC Rcd at 9821 ¶ 10.

⁸¹ *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14047 ¶ 23; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd at 19,150 ¶ 15; *AT&T-Comcast Order*, 17 FCC Rcd at 23256 ¶ 28.

⁸² *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 42; Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner, Inc. and American Online, Inc. Transferors, to AOL Time Warner Inc., Transferee, *Memorandum Opinion and Order*, 16 FCC Rcd 6547, 6550 ¶ 5, 6553 ¶ 15 (2001) ("*AOL-Time Warner Order*").

⁸³ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 43; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14047 ¶ 24; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd at 19150 ¶ 15. See also *WorldCom-MCI Order*, 13 FCC Rcd at 18032 ¶ 10 (conditioning approval on the divestiture of MCI's Internet assets); *Deutsche Telekom-VoiceStream Wireless Order*, 16 FCC Rcd 9779 (2001) (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁸⁴ 47 U.S.C. § 303(r). See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 43; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14047 ¶ 24; *WorldCom-MCI Order*, 13 FCC Rcd at 18032 ¶ 10 (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to (continued....)

authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁸⁵ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the merger will yield overall public interest benefits.⁸⁶ Despite the Commission’s broad authority, we have held that we will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)⁸⁷ and that are fairly related to the Commission’s responsibilities under the Communications Act and related statutes.⁸⁸ Thus, we do not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.

IV. QUALIFICATIONS OF APPLICANTS

24. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”⁸⁹ Therefore, as a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.⁹⁰ In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁹¹

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section 303(r)); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

⁸⁵ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 43; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14047 ¶ 24; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd at 19150 ¶ 15.

⁸⁶ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 43; *GM-News Corp. Order*, 19 FCC Rcd at 477 ¶ 5; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14047-48 ¶ 24; *WorldCom-MCI Order*, 13 FCC Rcd at 18034-35 ¶ 14. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁸⁷ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 43; *GM-News Corp. Order*, 19 FCC Rcd at 534 ¶ 131; *AT&T-Comcast Order*, 17 FCC Rcd at 23302 ¶ 140; *AOL-Time Warner Order*, 16 FCC Rcd at 6550 ¶ 5-6.

⁸⁸ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 43; *AOL-Time Warner Order*, 16 FCC Rcd at 6610 ¶¶ 146-47.

⁸⁹ See 47 U.S.C. §§ 308, 310(d); *Cingular-AT&T Wireless Order* 19 FCC Rcd at 21543 ¶ 44; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18.

⁹⁰ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see, e.g., *Cingular-AT&T Wireless Order* 19 FCC Rcd at 21543 ¶ 44; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd at 26493 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd at 9790 ¶ 19.

⁹¹ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 44; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd at 9790 ¶ 19; *SBC-BellSouth Order*, 15 FCC Rcd at 25465 ¶ 14.

25. We find that Sprint and Nextel meet the requisite qualifications. The Commission has previously determined that Sprint and Nextel are qualified to hold licenses.⁹² No parties have raised issues with respect to the basic qualifications of Sprint or Nextel.

V. PUBLIC INTEREST ANALYSIS

26. For purposes of our public interest analysis, this transaction involves most importantly two kinds of spectrum assets: SMR/broadband PCS licenses, and BRS/EBS licenses and leases. And, as the record demonstrates, this transaction at least potentially involves several relevant product markets. These include mobile voice service, mobile data service, dispatch service, and fixed wireless service. Issues of intermodal competition between mobile voice and wireline service arise as well. The overall structure of our analysis, however, is driven by two threshold considerations regarding the BRS/EBS licenses and leases. As further explained below, the availability of the BRS/EBS spectrum for new uses in the near term will be limited because licenses will need to transition to a new band plan, and thus neither public interest harms nor benefits related to use of this spectrum are likely in the near term. Moreover, it is unclear whether the eventual future use of this spectrum will be to provide mobile service, fixed service, or a combination of the two. Taken together, these considerations mean that any judgments regarding the impact of combining Nextel's and Sprint's BRS/EBS holdings will necessarily be speculative.

27. Therefore, we organize our analysis as follows. First, we address potential harms and benefits of this merger on mobile telephony markets, *excluding* any potential impact of the BRS/EBS licenses. In evaluating the competitive impacts on cellular and broadband PCS, we address both potential harms and benefits of the merger on these markets as affected by the proposed transfer of licenses. This analysis focuses primarily on the horizontal effects to output markets for telecommunication services that business and individuals purchase and consume. We also consider input markets, as the proposed Sprint Nextel merger affects spectrum licenses, a key input that may influence the overall competitive harms and benefits resulting from the transaction.

28. Next, we turn to a separate analysis of the potential impact of BRS/EBS assets, considering possible relevant markets, harms, and benefits. We note that BRS/EBS spectrum is not considered in the analysis of the mobile telephony market because 2.5 GHz spectrum 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. In our analysis of BRS/EBS assets, we find that, regardless of whether the efficient future use of the 2.5 GHz spectrum ultimately turns out to be mobile, portable, or fixed service, it is unlikely that this transaction will have a negative impact on competition. We envision that, under any of these scenarios, by the time this spectrum capacity is put to use, sufficient other spectrum should be available so that no undue market power will be conferred on the combined

⁹² See Applications to Assign Wireless Licenses from WorldCom, Inc. (Debtor-In-Possession) to Nextel Spectrum Acquisition Corp., *Memorandum Opinion and Order*, 19 FCC Rcd 6232, 6242 ¶ 26 (2004); Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications, Report No. 1729 (Jan. 28, 2004) (consenting to the assignment of call sign WPZU405 (formerly KNLF206) to Wireless Co. L.P., a wholly owned subsidiary of Sprint).

entity. Finally, we address other issues, including certain alleged impacts on wireless/wireline competition, on dispatch service, and on the provision of public safety services.

29. We do not include stand-alone discussions of the possibility of entry in either the mobile telephony or BRS/EBS sections. Rather, the impact of entry is incorporated into our overall analysis as follows. First, in the assessment of possible unilateral effects harm in mobile telephony, we consider the ability of firms already substantially built-out in a market to expand capacity and service. Second, in the assessment of both mobile telephony and the merged entity's expanded control over BRS/EBS spectrum licenses, we consider the entry that will be enabled by the 90 megahertz of bandwidth available in the Advanced Wireless Service ("AWS") auction, planned to commence in June 2006. We do not rely on any other planned auctions of spectrum licenses to enable entry, because their timing is more uncertain, they are too far in the future, or they involve encumbered spectrum. Moreover, we do not rely at all on entry by firms entirely new to the markets at issue here to ameliorate any anticompetitive harms.

A. Mobile Telephony Competition

30. In this section, we evaluate the proposed transfer of CMRS licenses and analyze the competitive implications to mobile telephony competition. A merger between Sprint and Nextel would combine two of the five remaining national mobile telephony carriers. As we do generally with horizontal mergers, we consider whether this merger would reduce the availability of consumer choices to the point that Sprint Nextel would have the incentive and ability, either by itself or in coordination with other firms, to raise prices for mobile telephony services or otherwise behave anticompetitively.⁹³ The ability to raise prices above competitive levels is generally referred to as "market power." Market power may also enable sellers to decrease service quality or future innovation.⁹⁴ A fundamental tenet of the Commission's public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.⁹⁵

31. A horizontal transaction is unlikely to create or enhance market power or facilitate its exercise unless it significantly increases concentration and results in a concentrated market, properly defined and measured.⁹⁶ Transactions that do not significantly increase concentration or result in a concentrated market ordinarily require no further competitive analysis. Market concentration is generally measured by the Herfindahl-Hirschman Index ("HHI") and changes in concentration are measured by the change in the HHI. However, HHI data provide only the

⁹³ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd. 15756, 15802-03 ¶ 83 (1997) ("*LEC Classification Order*"); Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, *Fourth Report and Order*, 95 FCC 2d 554, 558 ¶ 7-8 (1983) ("*Competitive Carrier Fourth Report and Order*"), vacated on other grounds, *AT&T v. FCC*, F.2d 727 (D.C. Cir. 1992), cert. denied, *MCI Telecommunications Corp. v. AT&T*, 113 S. Ct. 3020 (1993); *DOJ/FTC Merger Guidelines* § 0.1.

⁹⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* § 0.1, n.6.

⁹⁵ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68.

⁹⁶ *Id.* at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* § 1.0.

beginning of the analysis. The Commission then examines other market factors that pertain to competitive effects, including the incentive and ability of other firms to react and of new firms to enter the market. Ultimately, the Commission must assess whether it is likely that the merged firm could exercise market power in any particular market.⁹⁷

32. We begin by determining the appropriate market definitions to employ for the analysis, and by identifying relevant market participants. We then measure the degree of market concentration. Next we consider the possible competitive harms that could occur due to a significant increase in market concentration or market power. Mergers can diminish competition and firms can exercise market power in a number of ways. A merger may create market power in a single firm and allow that firm to act on its own in raising prices, lowering quality, reducing innovation, or restricting the deployment of new technologies or services. These are generally referred to as unilateral effects. Such may occur, for example, where the other firms in the market lack the capacity to serve the customers who would otherwise leave the merged firm due to a price increase. In differentiated product markets, a merger – by eliminating a competitor with a similar product – may allow the merged firm unilaterally to raise prices or lower quality profitably because it will no longer lose customers to its merged partner. A merger may also make coordinated actions that harm consumers by the firms selling in the market more likely, more successful, or more complete. This behavior includes tacit or express collusion and *may or may not* be lawful in and of itself. Such coordination requires reaching an agreement, then detecting and punishing departures from the agreement. The effects of such coordinated behavior may include increased prices, reduced number of minutes in a given price plan, degraded output quality, or some combination of these effects. They may also include longer-term effects such as reduced innovation and restricted deployment of new technologies and services.⁹⁸ After examining the transaction's potential effects on competition, we examine other potential public interest harms and the potential public interest benefits claimed by the Applicants.

33. In the analysis that follows, we focus our discussion on only those elements and considerations that are at issue in the instant merger. We note that in analyzing possible competitive harm from the transaction, we treat the Sprint and Nextel affiliates as if they are a part of the merged entity, while in analyzing the possible benefits, we exclude the affiliates. This conservative approach ensures that we neither overlook possible harms (*e.g.*, a reduction in competition where one of the merger partner's operations overlaps with an affiliate of the other partner), nor overstate potential public benefits (the Applicants' plans for network integration and service improvements do not, at this time, extend to the operations of any of the Sprint or Nextel affiliates).

34. The results of the first step in our analysis of mobile telephony competition are consistent with past findings in horizontal mergers between CMRS licensees. As explained below, we determine that the appropriate product market definition to employ for the analysis is the combined market for mobile telephony services. We analyze all of the separate markets, *e.g.*, interconnected mobile voice services and mobile data services, under this combined product

⁹⁷ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69.

⁹⁸ *Id.* at 21557 ¶ 70.

market. We also examine the relevant geographic market for analyzing the competitive effects of this transaction and find that the relevant market is local in nature and that all the facilities-based cellular, PCS, and SMR licensees that provide mobile telephony services in a geographic area are the relevant market participants.

35. The second step is a specific analysis of the horizontal and vertical effects in certain markets that result in potential competitive harms. To determine potential horizontal effects, we first measure the degree of market concentration through an initial Herfindahl-Hirschman Index (“HHI”) screen that eliminates from further review those markets in which there is clearly no competitive harm relative to today’s generally competitive marketplace.⁹⁹ We then examine two horizontal issues for the 124 Component Economic Areas (“CEAs”) and 190 Cellular Market Areas (“CMAs”)¹⁰⁰ identified by our screen for further competitive review: coordinated interaction and unilateral effects. Based on our analysis of conditions that typically exist in local U.S. markets, we find that the merger of Sprint and Nextel would be unlikely to facilitate coordinated interaction in the mobile telephony market. In addition, we find that this merger would be unlikely to result in adverse unilateral effects in the markets identified by the initial screen based on our analysis of market shares, number of competitors in the local market, probable competitive responses by rivals, and issues of product differentiation, substitutability, and efficiencies. Although the Applicants identified seven BTAs¹⁰¹ where, on first inspection, competitors may lack sufficient capacity to be able to respond adequately to potential

⁹⁹ The HHI is the sum of the squares of the market shares of each firm participating in the market. The HHI can range from nearly zero in an atomistic market to 10,000 in the case of monopoly. Since the HHI is based on squared market shares, it gives proportionally greater weight to carrier with large market shares. See Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 1.5 (Apr. 2, 1992, revised Apr. 8, 1997) (“DOJ/FTC Merger Guidelines”); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21564 n.306.

¹⁰⁰ The CMAs identified by the screen overlap to a very large extent with the CEAs identified. *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 104. CEAs, which are defined by the Bureau of Economic Analysis, are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 States and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, Feb. 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions. CMAs are the regions originally used by the Commission in issuing licenses for cellular service. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas (“MSAs”), 428 Rural Service Areas (“RSAs”), and a market for the Gulf of Mexico. See *Ninth Competition Report*, 19 FCC Rcd at 20632 ¶ 87. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Ninth Competition Report*, 19 FCC Rcd at 20632 ¶ 87.

¹⁰¹ [REDACTED] In this Order, “REDACTED” indicates confidential or proprietary information subject to the Protective Order in this proceeding. Applications for the Transfer of Control of Licenses and Authorizations from Nextel Services, Inc. and Its Subsidiaries to Sprint Corporation; *Protective Order*, 20 FCC Rcd 3607 (2005). The unredacted text is included in the confidential version of this Order, which is available upon request only to those parties who have executed and filed with the Commission signed acknowledgments of the protective order. Qualified persons who have not yet signed the required acknowledgment may do so in order to obtain the confidential version of this Order.

anticompetitive unilateral actions taken by the merged entity, based on a more granular analysis of local markets set forth in a confidential Appendix, we determine that harms in these few markets are unlikely. Finally, we also consider the potential vertical harms of the proposed transaction on the CMRS roaming market and separately conclude that the merger will not adversely affect competition in the market for roaming services or raise rates that would be passed through to consumers.

36. The last step in our review is to apply several criteria to decide whether purported public interest benefits should be considered and weighed against potential harms from the merger. Under our analysis, we determine that the Applicants' proposed transaction will likely result in some merger-specific public interest benefits. We explain below how certain post-merger efficiencies may result in specific cost savings that yield reduced prices for consumers, better coverage and service quality, and more extensive service offerings.

1. Market Definition

37. In this section, we determine the appropriate definitions for the product markets, the geographic markets, and the market participants. Our determinations with respect to the market definitions are generally consistent with the *Cingular-AT&T Wireless Order*, with discussions added here on retail and wholesale markets and on PTT. We adopt the definition of "mobile telephony services" used by Applicants, which is based on the *Cingular-AT&T Wireless Order*. In turn, we use these findings to frame our competitive analysis of the proposed merger.

a. Product Market Definition

38. As explained below, we find that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services. Nevertheless, we analyze all of these product markets under the combined market for mobile telephony. We believe, based upon consideration of factors including the nature of these services and their relationship with each other, that this approach will provide a reasonable assessment of any potential competitive harm to any of the markets as a result of the transaction. Further, we need not determine if dispatch and PTT are separate product markets. Dispatch is not affected by this merger. While PTT is affected, our conclusions about the impact of the transaction on PTT do not depend on whether it is treated as a separate product market or feature.

39. A relevant market includes "all products 'that consumers consider reasonably interchangeable for the same purposes.'"¹⁰² Thus, when one product is considered by consumers to be a reasonable substitute for another product, it is included in the relevant market.¹⁰³ A

¹⁰² *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956); see also *United States v. Microsoft*, 253 F.3d 34, 52 (D.C. Cir. 2001), *cert. denied*, 534 U.S. 952 (2001) (discussing non-interchangeability among products); *Wireless Telephone Services Antitrust Litigation*, No. 02 Civ. 2637(DLC), 2003 WL 21912603 at 9 (S.D.N.Y. Aug. 12, 2003) (relevant product market "consists of products that have reasonable interchangeability for the purposes for which they are produced – price, use and qualities considered").

¹⁰³ The Commission has considered whether one product is a reasonable substitute for another product. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 71; Applications of Western Wireless Corp. and ALLTEL Corp., WT Docket No. 05-50, *Memorandum Opinion and Order*, FCC 05-138, 2005 WL 1693557, ¶¶ 60-64 (rel. July 19, 2005) ("*ALLTEL-Western Wireless Order*").

relevant product market is defined in the economic literature as the smallest group of competing products or services for which a hypothetical monopolist in a geographic area could profitably impose at least a “small but significant and non-transitory price increase,” presuming no change in the terms of sale of other products (the “hypothetical monopolist test”).¹⁰⁴

40. To determine the relevant product markets for the purposes of evaluating the transaction, we first assume that a hypothetical monopolist within a geographic area offers one of the differentiated mobile telephony products such as stand-alone data services or a regional rate plan. Then we assume that this monopolist imposes a small but significant and non-transitory price increase for this mobile telephony service, and finally we evaluate the likely response of consumers to this price increase. If the price increase would allow the monopolist to make greater profits over a sustained period than before the price increase, even though some consumers will switch to other products, then this product may be defined as a relevant product market.¹⁰⁵

41. In their Application, Sprint and Nextel state that they have followed the *Cingular-AT&T Wireless* definition of “mobile telephony services” to define the product market.¹⁰⁶ In that Order, the Commission found that separate markets exist for interconnected mobile voice and mobile data services, and also for residential and enterprise services.¹⁰⁷ However, in performing its analysis, the Commission decided that analyzing the proceeding using a combined market for mobile telephony was unlikely to understate any potential competitive harm, and thus analyzed all of these services under such a combined market.¹⁰⁸

(i) Mobile Voice and Mobile Data Services

42. Although we find that there are separate markets for interconnected mobile voice¹⁰⁹ and mobile data services,¹¹⁰ our competitive analysis will not distinguish mobile voice subscribers from mobile data subscribers. Instead of a separate analysis of the market for each of these services, we will analyze both of them under the combined market for mobile telephony. This decision is consistent with our determination in the *Cingular-AT&T Wireless Order* and in

¹⁰⁴ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 71 & n.259 (citing *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12 and Gregory Werden, *The 1982 Merger Guidelines and the Ascent of the Hypothetical Monopolist Paradigm*, 71 ANTITRUST L.J. 253 (2003)).

¹⁰⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 73; *DOJ/FTC Merger Guidelines* §§ 1.11.

¹⁰⁶ Application, Public Interest Statement at 68.

¹⁰⁷ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

¹⁰⁸ See *id.* at 21588, 21559-60, 21560 ¶¶ 74, 77, 79.

¹⁰⁹ Interconnected mobile voice consists of all commercially available two-way mobile voice services, providing access to the public switched telephone network via mobile communications devices employing radiowave technology to transmit calls. See *Ninth Competition Report*, 19 FCC Rcd at 20611-12 ¶ 32.

¹¹⁰ Mobile data service is considered to be the delivery of non-voice information to a mobile device. Two-way mobile data services include the ability not only to receive non-voice information on an end-user device, but also to send it from an end-user device to another mobile or landline device using wireless technology. Data services available today include, but are not limited to, short messaging service, e-mail, and access to the Internet. See *Ninth Competition Report*, 19 FCC Rcd at 20612 ¶ 33.

the *ALLTEL-Western Wireless Order*.¹¹¹ For reasons outlined here, we believe that an analysis based on the combined mobile telephony market will provide a reasonable assessment of any potential competitive harm to the markets for mobile voice or data services due to the transaction. First, we continue to believe, consistent with the *Cingular-AT&T Wireless Order*, that most mobile data services likely are sold as add-ons to mobile voice services rather than as separate data-only service offerings.¹¹² Therefore, we believe that nearly all mobile data subscribers are also mobile voice subscribers using the same phone number. Second, a variety of these mobile data add-ons are offered by all nationwide mobile carriers and some smaller regional carriers.¹¹³ Third, while Sprint continues to be the market leader in mobile data services as measured by the contribution of data to revenue, Nextel provides a lesser level of mobile data services by this same measure. In particular, in the first quarter of 2005 data accounted for 9.8 percent of Sprint's Average Revenue Per Unit ("ARPU"), followed by T-Mobile (7.6 percent), Cingular (7.5 percent), Verizon Wireless (6.3 percent), and Nextel (4.5 percent).¹¹⁴ Fourth, even in these circumstances where Sprint's data revenues exceed Nextel's data revenues, revenues derived from mobile data service provide only a relatively small percentage of nationwide carriers' revenues, despite signs of expansion in these services. As demonstrated immediately above, none of the five carriers listed (Sprint, T-Mobile, Cingular, Verizon Wireless, and Nextel) have data revenues as a percent of ARPU in excess of 10 percent.¹¹⁵ As reflected by these revenue levels, mobile voice service accounts for a larger part of carriers' ARPU than mobile data services. Under these circumstances, if competition is reduced in the mobile voice market as a result of this transaction, then we believe that there also would be a reduction in competition in the mobile data market primarily because of mobile data service's current standing as an add-on to mobile voice service. In turn, if the transaction does not harm competition in the mobile voice market, then we find it unlikely that the transaction would harm competition in the mobile data market because of the relatively low levels of ARPU discussed above that are attributable to data services, the general availability of data services from carriers, and the nature of data offerings as add-ons to mobile voice service. Accordingly, we believe that a combined analysis

¹¹¹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74; *ALLTEL-Western Wireless Order*, 2005 WL 1693557, ¶¶ 25-31.

¹¹² See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 75.

¹¹³ See *Ninth Competition Report*, 19 FCC Rcd at 20659 ¶ 153 (citing 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, *Eighth Report*, 18 FCC Rcd 14783, 14846-14855 ¶¶ 143-166 (2003) ("*Eighth Competition Report*").

¹¹⁴ Simon Flannery *et al.*, *1Q05 Trend Tracker: The Telecom Conundrum*, Morgan Stanley, Equity Research, June 8, 2005, at 25 ("*1Q05 Trend Tracker: The Telecom Conundrum*"). See also Daniel Henriques *et al.*, *The Quarter in Pictures, 1Q05 U.S. Telecom Services Review*, Goldman Sachs, Global Investment Research, May 2005, at 24 ("*The Quarter in Pictures, 1Q05 U.S. Telecom Services Review*"); John Byrne *et al.*, *Wireless Telecom Investor*, Kagan Research, LLC, June 6, 2005, at 5 ("*Wireless Telecom Investor*").

¹¹⁵ *1Q05 Trend Tracker: The Telecom Conundrum* at 25. See also *The Quarter in Pictures, 1Q05 U.S. Telecom Services Review* at 24; *Wireless Telecom Investor* at 5.

that includes both mobile voice and mobile data services will not fail to identify any potential competitive harm to the mobile voice or data services markets.¹¹⁶

(ii) Residential and Enterprise Services

43. Similarly, although we find that there are separate relevant product markets for residential and enterprise services, we will aggregate those markets for purposes of our structural analysis. We find that this determination is consistent with the *Cingular-AT&T Wireless Order*.¹¹⁷ Because most mobile telephony service subscribers are residential customers,¹¹⁸ an analysis based on subscriber shares for a combined mobile telephony services market will tend to provide more accurate insights into the residential market. Moreover, analyzing a combined residential and enterprise product market should provide a fair assessment of the potential competitive harm to the enterprise service market because the competition to attract and retain enterprise customers, who typically generate higher revenue per subscriber for carriers than residential customers,¹¹⁹ is likely to be relatively intense.¹²⁰ Under these circumstances, we believe that our analysis of a combined residential and enterprise product market should provide a fair assessment of potential competitive harm.¹²¹

¹¹⁶ We find that our reasoning here does not conflict with the *Cingular-AT&T Wireless Order* where the Commission addressed Sprint's role in the mobile data services market relative to the mobile voice services market. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558-60 ¶¶ 75-77. Indeed, that decision recognized Sprint's position in the mobile data market, and a major reason for the proposed Sprint Nextel transaction is the potential for improved access by Nextel's customers to data services.

¹¹⁷ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558, 21560 ¶¶ 74, 79.

¹¹⁸ One analyst estimated that, in 2004, only 25 percent of wireless users were business customers, with the remaining 75 percent being consumers. *10-Year Wireless Projections*, KAGAN WIRELESS TELECOM INVESTOR, June 6, 2005, at 2. [REDACTED]

¹¹⁹ IDC recently projected U.S. consumer wireless ARPU to increase to \$48 in 2009, and U.S. business wireless ARPU to increase to \$74 in 2009. Press Release, IDC, "IDC Forecasts Both U.S. Consumer and Business Wireless Subscriber ARPU to Trend Upward Through 2009," (April 14, 2005) at <http://www.idc.com/getdoc.jsp?containerId=prUS00125505> (last visited July 28, 2005). See also Ric Prentiss, *et al.*, *Nextel Communications, Inc.: Initiation of Coverage*, RAYMOND JAMES, EQUITY RESEARCH, Feb. 9, 2004, at 6 (stating that business customers generally spend more than consumers) ("*Nextel: Initiation of Coverage*"); *Wireless Services, Characteristics of Wireless Subscribers and Non-Users*, BEAR STEARNS, EQUITY RESEARCH, Feb. 2005, at 6, Ex. 9 (comparison of "Average Monthly Expenditure Across Motivations for Adopting Wireless" shows highest expenditure is for business purposes); [REDACTED]

¹²⁰ See, e.g., Application, Attachment B, Charles River Associates Analysis ("CRA Analysis") at 49 ¶ 133 (stating that "high degree of competition for enterprise customers" constrains certain prices); [REDACTED] Holly Wade, *Telecommunications*, NAT'L SMALL BUSINESS POLL, Issue 8, at 6 (2004) (discussing competition among cell phone service providers; fifty-four percent of owners of small businesses polled believed there was more competition for their business among cell phone providers at time of poll than three years before; on average small business owners were aware of 5 cell phone service providers in their area).

¹²¹ In addition, we note that Nextel's focus has been on business customers whereas Sprint's focus has traditionally been on consumers. See CRA Analysis at 33-34 ¶ 88 (Nextel's focus more toward business, while Sprint's offerings are designed to appeal toward non-enterprise customers); *Nextel Initiation of Coverage* at 14 ("Nextel's main focus is business customers, which represent approximately 70 percent of the total customer base."); [REDACTED] Therefore, it is unlikely that the combined Sprint Nextel will gain a disproportionate share of either residential customers or enterprise customers as a result of the merger. This in turn implies that an analysis based on (continued...)

(iii) Nationwide and Local/Regional Services

44. We also do not define separate product markets for nationwide and local/regional carrier calling plans. Rather, in our analysis below we take account of the fact that local/regional plans are differentiated from nationwide plans, and thus firms that can only provide local/regional plans may not have the same competitive role as firms offering nationwide service plans.

(iv) Retail and Wholesale Markets

45. In addition, we will not treat retail and wholesale as separate markets for purposes of analyzing the transaction, although we will take account of the role of resellers in our discussion of likely competitive effects. Resellers offer service to consumers by purchasing airtime at wholesale rates from facilities-based providers and reselling it at retail prices. However, the resale sector accounts for only approximately nine percent of all mobile telephone subscribers.¹²² Applicants contend that Sprint, Cingular, and Verizon Wireless together supply access for approximately 95 percent of all subscribers who are served through a wholesale entity, and that there is vigorous competition among these carriers. Applicants further state that such competition, together with Nextel not supplying wholesale services, indicates that the proposed Sprint Nextel merger will not harm competition among existing suppliers of wholesale services.¹²³ Applicants also state that other carriers generally have sufficient capacity to absorb both Sprint Nextel retail customers who would want to switch carriers in response to any possible post-merger price increase, as well as the customers that Sprint currently serves through its wholesale arrangements.¹²⁴ We agree with these assertions by the Applicants, and we find that the proposed merger would not likely harm competition among existing suppliers of wholesale services.¹²⁵ Accordingly, we do not examine separate retail and wholesale markets in our competitive analysis.

(v) Push-To-Talk (PTT)

46. As we explain below, we find it is not necessary, for the purposes of this order, to decide whether dispatch is a separate market from CMRS or the related issue of whether PTT is a “feature” or a “product.” We note that a variety of PTT and dispatch services are available to customers. PTT is a “walkie-talkie” type of 2-way radio-type service that allows communication between parties at the touch of a button. PTT permits users to begin talking to one another instantaneously, subject to differences in latency or set-up periods between various carriers, rather than going through the call-setup process normally associated with mobile voice service (e.g., locating and dialing a number of another party).¹²⁶ As discussed below, PTT generally is

(Continued from previous page)

Sprint Nextel’s share of mobile telephony subscribers would not miss any potential competitive harms to both the residential market and the enterprise market as a result of the transaction.

¹²² *Local Telephone Competition: Status as of December 31, 2004*, Federal Communications Commission, July 2005, Table 13: Mobile Wireless Telephone Subscribers.

¹²³ CRA Analysis at 19-20 ¶¶ 49-54.

¹²⁴ *Id.* at 20 ¶ 52.

¹²⁵ *See id.* at 19-20 ¶ 51-52.

¹²⁶ *See, e.g.*, Commerce Times, “Push-to-Talk Might Evolve as Standard Cellular Feature,” *ecommercetimes.com* at <http://www.technewsworld.com/story/43225.html> (visited July 13, 2005).

bundled as a feature with other services such as mobile voice and mobile data on the handset and is usually available through the public switched telephone network. “Dispatch” is commonly understood to refer to service that allows two-way, real-time, push-to-talk voice communications between mobile units and fixed units, or between two or more mobile units.¹²⁷ Dispatch differs from mobile voice communications because it is generally not interconnected with the public switched telephone network (“PSTN”) and allows instant, real-time conferencing with groups, including both one-to-many and many-to-one communications.¹²⁸ Dispatch has been described as “neither an industry nor a distinct technology,” but rather as an application that can be provided by different technologies.¹²⁹ The term “trunked” refers to dispatch which allows sharing of multiple radio channels. Dispatch service may be bundled with other offerings such as mobile voice or mobile data services.¹³⁰

47. We do not need to address whether unbundled dispatch should be analyzed as a separate relevant product market for this transaction.¹³¹ Sprint does not offer a stand alone PTT service that would be similar to that of unbundled dispatch service, and thus is not a competitor in any such market.¹³² In this regard, SAFE Coalition states that the “unbundled dispatch services offered by smaller, independent, regional SMR providers is a differentiated service, generally distinct from mobile telephony services offered by PCS and cellular carriers such as ... Sprint PCS (“Ready Link®)... all of whom do not generally offer unbundled dispatch service (or close substitutes)” with capabilities offered by SMR dispatch service providers.¹³³ Moreover, any lack of available offerings by nationwide carriers of unbundled dispatch suggests that it currently may not be economical for them to offer such service, and that we need not consider the impact of the transaction on unbundled dispatch. In addition, we do not agree with SAFE Coalition’s suggestion that discussions in CMRS competition reports regarding various services, including the use of SMR spectrum for the provision of dispatch, controls our finding with respect to the product market to be considered for this transaction.¹³⁴ Indeed, the discussion of

¹²⁷ Applications of Motorola Inc., *Order*, 16 FCC Rcd 8451, 8457 ¶ 13 (WTB) *recon. denied*, 16 FCC Rcd 15235 (WTB 2001) (“*Motorola*”).

¹²⁸ *Id.* See also *Ninth Competition Report*, 19 FCC Rcd at 20633-34 ¶¶ 89. See also; 47 C.F.R. § 22.99 (defining dispatch for purposes of Part 22 as certain communications that are “transmitted directly through a base station, without passing through mobile telephone switching facilities.”).

¹²⁹ *Motorola*, 16 FCC Rcd at 8457 ¶ 13.

¹³⁰ In contrast, unbundled offerings may be made, for instance, by small, independent, regional providers of unbundled dispatch. See SAFE Petition to Deny at 5.

¹³¹ The Safety and Frequency Equity Competition Coalition (“SAFE”) alleges that Applicant’s proposed license assignments do not adequately address the recognition of SMR dispatch as a differentiated service. See SAFE Petition to Deny at 5; SAFE Reply to Joint Opposition at iii, 4-6. SouthernLINC Wireless raises issues concerning the impact of the proposed merger on roaming, and avers that the merger involves a distinct customer segment of interconnected voice and PTT digital dispatch services on the iDEN network. SouthernLINC Wireless Comments at 4.

¹³² Also, as discussed below, we find that Sprint does not currently offer a PTT service that is a close enough substitute for Nextel’s offering that this proposed merger would increase the probability of adverse unilateral harm to consumers interested in PTT. See *infra* Section V.A.4.b.

¹³³ SAFE Coalition Petition to Deny at 6.

¹³⁴ See SAFE Reply to Joint Opposition at 4-8.

dispatch in past CMRS competition reports addresses the evolving nature of the services offered by carriers and the role of dispatch,¹³⁵ and some of the reports make clear that certain matters considered therein should not be construed as controlling in other contexts.¹³⁶ As a result of these factors, even if we were to define unbundled dispatch service as a separate product market, that market would not be affected by this merger. Accordingly, we reject SAFE Coalition's arguments.

48. In contrast to dispatch, PTT is affected by this merger. 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."¹³⁷ Some cellular and broadband PCS carriers, including Sprint, also offer PTT functionality.¹³⁸ Sprint offers PTT as an add-on feature to its basic interconnected mobile voice service,¹³⁹ and does not offer any other types of PTT or dispatch services. In these circumstances, we find that the overlapping PTT service offered by both Nextel and Sprint is bundled interconnected mobile voice and PTT, and is included in our analysis below.

49. We find that our conclusions will not be affected by whether we treat PTT as a separate product or a feature. It appears that basic interconnected mobile voice offerings may be in a position to substitute more closely for PTT services than they have in the past. For example, carriers generally offer some type of free mobile-to-mobile, or "in-network," calling which requires no additional fees for incoming or outbound calls between subscribers of the company.¹⁴⁰ Since one of the advantages of such mobile-to-mobile or "in-network" services is that they offer unlimited calls within a group of users, unlimited in-network calling may allow basic voice service to substitute for dispatch for a number of customers.

50. In conclusion, treating PTT as a feature or a product does not change the results of our competitive analysis. As explained below,¹⁴¹ the users of PTT will not be harmed as a result of the transaction.

¹³⁵ See 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, *Sixth Report*, 16 FCC Rcd 13350, 13353 (2001) ("*Sixth Competition Report*") (noting recognition of increasing convergence of services provided by dispatch and other mobile telephony services); *Ninth Competition Report*, 19 FCC Rcd at 20634 ¶ 89 (discussing development of dispatch functionality by carriers).

¹³⁶ See, e.g., *Sixth Competition Report*, 16 FCC Rcd at 13353 n.11; *Ninth Competition Report*, 19 FCC Rcd at 20608 n.32.

¹³⁷ Valente and West Decl. at 2 ¶ 2; Application, Public Interest Statement at 24 (Direct Connect "enables customers to quickly establish private, one-to-one conferences nationwide or within a group, or local one-to-many conferences.").

¹³⁸ See *Ninth Competition Report*, 19 FCC Rcd at 20634 ¶ 89.

¹³⁹ See Sprint Voice Features at <http://www.sprint.com/business/products/categories/voiceFeatures.jsp> (last visited July 27, 2005) ("Sprint Voice Features website"). See also Valente and West Decl., Attachment 1 at 3 ¶ 7.

¹⁴⁰ See *Ninth Competition Report*, 19 FCC Rcd at 20644-45 ¶ 114 (discussing pricing plans of various firms, including Verizon Wireless, Cingular, and Sprint).

¹⁴¹ See *infra* Section V.A.4.

b. Geographic Market Definition

51. We find that the relevant geographic market for analyzing the competitive effect of this transaction on mobile telephony is local. This finding is primarily rooted in the premise that consumers obtain their wireless service in a local area, not on a national basis.

52. The Supreme Court has defined a relevant geographic market as the area in which consumers can reasonably search for competing services.¹⁴² It is commonly defined in the economic literature as the geographic area in which a hypothetical monopolist could profitably impose at least a “small but significant and nontransitory” increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change.¹⁴³

53. For the purposes of evaluating this transaction, we use the hypothetical monopolist test to determine the relevant market by asking what is the smallest geographic area in which a hypothetical monopolist could profitably and permanently impose a small but significant price increase. In asking this question, we assume that buyers of wireless services would respond to a price increase by switching to wireless services purchased in a different location rather than, by switching to different wireless services.

54. We note two salient features about the purchase and sale of mobile telephony service. First, carriers base their monthly rates on the purchaser’s billing address or zip code. Thus, traveling to a different store, or a different town, or purchasing service over the Internet, will not provide a purchaser with a different monthly rate. In that respect, the geographic market is extremely local, perhaps as small as a zip code or even smaller. On the other hand, it is also true that for national plans, many of the carriers offer the same monthly rate throughout the country, and for regional plans offer the same plan and rate throughout a large region. Thus, we could conclude that for regional plans, the geographic markets are large regions, for example, metropolitan areas or larger portions of states, and for national plans are as large as multi-state regions.¹⁴⁴

55. The second salient feature is that while monthly rates are on the one hand attached to a subscriber’s billing address but in practice do not differ across large regions, promotions and handset prices are not attached to a billing address and do vary across a region. Indeed, they may vary even within a town because of the presence of authorized independent dealers. Thus, although a purchaser may not be able to obtain a different monthly rate by traveling to a different location, he or she could obtain a different price for the handset or a different promotion. Finally, we note one additional and important point: most purchasers of mobile telephony service

¹⁴² *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961); accord *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321, 359 (1963).

¹⁴³ The relevant geographic market selected for analysis must also reflect “the commercial realities of the industry.” See *Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 917 F.2d 1413, 1421 (6th Cir. 1991) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 336-37 (1962)); *RSR Corp. v. FTC*, 602 F.2d 1317, 1323 (9th Cir. 1979) (same).

¹⁴⁴ Although carriers currently set uniform prices for monthly service across large regions or the entire country, nothing prevents them from doing otherwise. Without evidence regarding constraints on the carriers’ ability to set different prices, for example, the cost of advertising, we would not rely on their current practices to define a geographic market so broadly.

prefer a local telephone number,¹⁴⁵ and stores and carriers offer only local telephone numbers. Thus, the distance most users would be willing to travel to obtain wireless service may well be limited by the geographic boundaries of the local non-toll calling area.

56. For the proposed transaction, the geographic market is the area within which a consumer is most likely to shop for mobile telephony service. For most individuals, we believe this will be a local area, as opposed to a larger regional or nationwide area. In most parts of the United States, partially for the reasons set forth above, we find that the areas within which consumers regularly shop for wireless services are larger than counties, may encompass multiple counties and, depending on an individual's location, may even include parts of more than one state. We reject the argument that the market is as small as a county. If a hypothetical monopolist were to impose a small, non-transitory price increase for mobile telephony services (including promotions and handset prices) within a single county, we find that it would likely be unprofitable because significant numbers of consumers would be able to circumvent the higher price by obtaining a reasonably comparable service at a lower price in a nearby county.¹⁴⁶

57. We also do not agree with Preferred Communications¹⁴⁷ that the relevant geographic market should be defined as an Economic Area ("EA"), of which there are 172 in the United States. Consistent with the Commission's decision in the *Cingular-AT&T Wireless Order*, we continue to define the relevant geographic market as local, and analyze the data on the basis of 348 CEAs and 734 CMAs.¹⁴⁸ We believe that CEAs and CMAs represent more appropriate geographic markets than do EAs because they better reflect the local nature of the markets. We believe that these smaller geographic areas provide a better approximation of the areas in which consumers base their decisions to purchase wireless services. Thus we continue to believe that a combination of analyses by CEA and by CMA will provide us with the best estimates of potential competitive harm, and decline to perform competitive analysis on the basis of EAs.

c. Market Participants

58. We find that mobile telephony offered by cellular, PCS, and SMR licensees employing various technologies provide the same basic voice and data functionality and are indistinguishable to the consumer. Generally, we limit our analysis to cellular, PCS, and SMR facilities-based carriers, and exclude satellite carriers, wireless VoIP providers, MVNOs and

¹⁴⁵ By local number, we mean one for which a user does not incur a toll-charge for calling from a given location. Although, a non-local telephone number does not affect the cost of wireless service of the wireless subscriber, because most carriers offer long-distance service at no additional charge, having a non-local number does affect the cost of landline users calling that subscriber.

¹⁴⁶ We assume that, although the hypothetical monopolist is the only seller of service in the county, customers can still receive service in the county if they purchase their service elsewhere, because there are other carriers who serve the county but do not have stores there, or because other carriers have roaming agreements with the hypothetical monopolist at prices that are not passed on to the customer, or because the customer can purchase service from the hypothetical monopolist itself in a different county at a lower price. As to the last point, we note that wireless carriers do not charge their customers different prices for service on different portions of their own network.

¹⁴⁷ See Preferred Communications Petition to Deny at 8.

¹⁴⁸ See *infra* Section V.A.2.

resellers¹⁴⁹ from consideration when computing initial measures of market concentration. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is significantly higher than for services offered by cellular, PCS or SMR carriers.¹⁵⁰ Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. We also do not consider wireless VoIP carriers as providing the same functionality as mobile telephony providers because in general the service they provide is nomadic rather than mobile.¹⁵¹ We acknowledge, however, that non-facilities based service options such as MVNOs and resellers have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior. We take account of the role of MVNOs and resellers in our discussion of likely competitive effects below.

59. We conclude that all the facilities-based cellular, PCS, and SMR carriers that provide service in a geographic area constitute the relevant market participants. In our analysis, we consider both firms that offer nationwide service and firms that can only offer regional and local service. We focus particularly, however, on those carriers that offer competitive nationwide service plans. We find that such firms include the five facilities-based nationwide carriers (Cingular, Nextel, Sprint, T-Mobile, and Verizon Wireless) and three large regional firms (ALLTEL/Western Wireless, U.S. Cellular Corp. (“USCC”), and Dobson Communications Corporation (“Dobson”)¹⁵²). Other regional and small firms are typically unable to offer national mobile telephony that can compete effectively with the various price and non-price components of the national services offered by the larger carriers.

60. PTT is an important part of our analysis because of the wide range of carriers that make such an offering available to consumers. Therefore, we discuss major carriers in the United States that offer some form of PTT. Such carriers include Sprint, Verizon Wireless, and ALLTEL.¹⁵³ Nextel offers a bundled service which includes nationwide PTT and interconnected mobile voice. Sprint offers nationwide PTT as an add-on to its interconnected mobile voice service.¹⁵⁴

¹⁴⁹ Today, resellers are often referred to as MVNOs. MVNOs are distinguished from “traditional” resellers by a variety of factors including brand appeal, distribution channels, bundling wireless and non-wireless products, and value added services. See *Ninth Competition Report*, 19 FCC Rcd at 20614 n.71. We have declined to find that a separate product market exists for resell/wholesale services. The resale sector accounts for approximately 9 percent of all mobile telephony subscribers. *Local Telephone Competition: Status as of December 31, 2004*, Federal Communications Commission, July 2005, Table 13: Mobile Wireless Telephone Subscribers.

¹⁵⁰ See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited July 27, 2005); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalstarusa.com/en/airtime/voicepricing/> (last visited July 27, 2005).

¹⁵¹ Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town).

¹⁵² The number of subscribers for Dobson more than doubled from year-end 2002 (approximately 768,000) to year-end 2003 (approximately 1,552,000). See *Ninth Competition Report*, 19 FCC Rcd at 20697, tbl. 4 & n.2. In addition, Dobson has announced launch of its Enhanced Data for GSM Evolution (“EDGE”) service. See *Dobson launches EDGE services in 16-state service area*, RCR WIRELESS NEWS, Oct. 18, 2004, at 22.

¹⁵³ Other smaller regional carriers, such as Southern LINC Wireless, may provide competitive PTT options in certain local markets.

¹⁵⁴ See Sprint Voice Features website.

d. Input Market for Spectrum

61. We evaluate whether spectrum is within the input market for provision of mobile telephony service by examining its suitability for mobile voice service, its physical properties, the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony. The input market currently includes cellular, PCS, and SMR spectrum and currently totals approximately 200 megahertz of spectrum.¹⁵⁵ We find that BRS/EBS 2.5 GHz spectrum is not considered in this input market because 2.5 GHz spectrum 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.¹⁵⁶ Our determination that this approximately 200 megahertz is the input market for spectrum is consistent with our decision to analyze the combined market for mobile telephony.

2. Initial Screen

62. Our competitive analysis consists of an initial screen, followed by a further case-by-case review of the markets identified by that screen. The purpose of this initial screen was to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace. It is designed to be conservative and ensure that we did not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists.¹⁵⁷ In addition to market concentration, we considered the input market of spectrum that is suitable for the provision of mobile telephony services because spectrum is a necessary resource for wireless carriers to compete effectively.

¹⁵⁵ The approximately 200 MHz of spectrum includes 50 MHz for cellular services, 120 MHz for Broadband PCS, see *Ninth Competition Report*, 19 FCC Rcd at 20632-3 ¶¶ 86-88, and additional spectrum for SMR. See *id.* at 20633-34 ¶ 89 & n.197.

¹⁵⁶ In *Cingular-AT&T Wireless*, we noted that Advanced Wireless Service ("AWS") and Broadband Radio Service ("BRS") spectrum does not currently meet our criteria because it is committed to non-mobile telephony uses currently and for the near-term future. *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21561 n. 283. Subsequent to the adoption of the *Cingular-AT&T Wireless Order*, Congress adopted the Commercial Spectrum Enhancement Act, Public Law No. 108-494 (2004), enabling the Commission to announce its intent to auction AWS licenses as early as June 2006. FCC to Commence Spectrum Auction that Will Provide American Consumers New Wireless Broadband Services, News Release (rel. Dec. 29, 2004). Accordingly, some portion of the AWS spectrum may well be licensed in the near-term future. Nevertheless, given the federal and non-federal encumbrance of the 1710-1755 MHz and 2110-2155 MHz bands in many markets, we conclude that it is still premature to classify the AWS spectrum as suitable for the provision of mobile telephony services for purposes of our analysis here. Moreover, we observe that the Commission's *Rebanding Orders* will alter the bandwidth held by Sprint Nextel and which will be made available to the market. This will result in less available total bandwidth but will provide more contiguous spectrum suitable for the provision of advanced mobile services. We anticipate that in the future, as more spectrum becomes available, technological developments lead to performance advances, and allocations are revised, the Commission may from time to time need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.

¹⁵⁷ An initial screen is only the beginning of our competitive analysis. Subsequent sections examine the other factors in a case-by-case analysis of whether there will be potential competitive harms in certain geographic markets if the transaction were to be approved without conditions.

63. This analysis follows the general structure of the DOJ/FTC Merger Guidelines, and we implemented a screen consistent with the Commission's analysis of recent transactions.¹⁵⁸ A market was identified as requiring further competitive review if the post-transaction HHI would be greater than 2800 and the change in HHI would be 100 or greater; or if the change in HHI would be 250 or greater regardless of the level of the HHI; or if, post-transaction, the Applicants would hold 70 megahertz or more of spectrum.¹⁵⁹ Consistent with the Commission's review of the Cingular-AT&T Wireless transaction, we used data from our Numbering Resource Utilization / Forecast ("NRUF") database to calculate market shares and market concentration for two sets of geographic areas, CEAs and CMAs.¹⁶⁰ We also use the NRUF data, in conjunction with billing data submitted by a number of carriers,¹⁶¹ to undertake our in-depth, market-by-market analysis of the areas identified for further review by the initial screens. We identified 124 CEAs and 190 CMAs for further, case-by-case analysis.¹⁶²

¹⁵⁸ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 107.

¹⁵⁹ We chose initial thresholds of 2800 for the HHI and 100 for the change in HHI because a mobile telephony market that does not exhibit at least this combined post-merger level of concentration will be no more concentrated than at the time the Commission's last congressionally mandated review which concluded the market was effectively competitive. See *Ninth Competition Report*, 19 FCC Rcd at 20600 ¶ 2. Our analysis indicates that the current average HHI in markets across the country has increased to slightly over 3100 as a result of the Cingular-AT&T Wireless merger. Nevertheless, we have maintained an HHI score of 2800 as the trigger for the initial screen. A slightly more rigorous review is consistent with the analytical purpose of the initial screen – to eliminate from review markets where there is no competitive harm rather than identifying markets where competitive harm may exist. Although applying a criterion of 250 or greater resulted in the review of markets in which the concentration levels are below that of the average market today, we chose to apply this criterion to be confident that we fully evaluated any market in which the merger may adversely affect competition.

¹⁶⁰ *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 104. CEAs, which are defined by the Bureau of Economic Analysis, are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 States and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties which are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. See Kenneth P. Johnson and John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, November 2004, at 68-71. Although the total number of CEAs decreased from 348 to 344, we did not adopt the new CEA definitions for purposes of this transaction and relied on the 348 previously defined CEAs. CMAs are the regions originally used by the Commission in issuing licenses for cellular service. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas ("MSAs"), 428 Rural Service Areas ("RSAs"), and a market for the Gulf of Mexico. See *Ninth Competition Report*, 19 FCC Rcd at 20632 ¶ 87. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Ninth Competition Report*, 19 FCC Rcd at 20632 ¶ 87.

¹⁶¹ Billing data was submitted by Cingular, Nextel, T-Mobile, Sprint, Verizon Wireless, ALLTEL, Western Wireless, and Southern Linc Wireless in response to a staff data request. See, *supra*, at Section II.C.1. These data include information on all service plans for which the carrier currently has subscribers, including the number of subscribers taking a particular plan, broken down by county. From this data set, we calculate the number of subscribers per county for each carrier. This data set also can be aggregated up to larger geographic areas and can be used to calculate market shares for all mobile wireless carriers. Using two sets of data to cross-check against each other gives us confidence that any shortcomings in either data set will not lead to inappropriate analytical conclusions.

¹⁶² The CEAs and CMAs are listed in Appendix B.

64. By comparing the results of these two applications of the initial HHI threshold and analyzing any market identified by either application, we ensure that we do not overlook any local area that required a closer case-by-case analysis. Although the structure of some markets not identified for additional analysis will change as a result of the transaction, we believe that these structural changes are negligible. Therefore, we find that these structural changes will not alter carrier conduct in such a way as to impair competition and hence market performance. In our judgment, we find that these markets need no further review given the lack of potential for competitive harm as a result of this merger.

65. In addition to an examination of post-merger HHI and change in HHI, our initial screen included an analysis of the post-merger spectrum holdings of the combined firm in all local markets. This review identified any market where the Applicants hold 70 megahertz, or more, of spectrum in all portions of the market. Seventy megahertz of spectrum represents a little more than one-third of the total bandwidth available for mobile telephony today, leaving approximately 130 megahertz of spectrum available for use by other carriers in a local market. Our market-by-market analysis in this proceeding, as well as evidence from the mobile telephony markets across the country, indicates that 130 megahertz of spectrum is sufficient to support at least three viable competitors.¹⁶³ Consistent with the conservative approach embodied in our analysis, we subjected any market in which only one entity controls more than one-third of the available spectrum to further review. We found that there were no areas where, post-transaction, the Applicants would hold 70 megahertz or more of spectrum.

66. The Applicants suggest that the Commission should evaluate the Sprint Nextel merger with more permissive structural screens than were used in the Cingular-AT&T Wireless transaction. They indicate that the HHI levels in screens used in the Cingular-AT&T Wireless transaction likely overstate the number of markets that deserve closer analysis in this case.¹⁶⁴ The Applicants argue that adjustments should be made because Nextel is not an Incumbent Local Exchange Carrier (“ILEC”) and the Sprint ILECs account for fewer than 5 percent of all switched access lines. Also, they state that Sprint Nextel will generally have lower spectrum holdings than did Cingular-AT&T Wireless. Finally, the Applicants believe that the Sprint Nextel merger creates larger and more credible efficiency benefits than did the Cingular-AT&T Wireless transaction.¹⁶⁵

67. We disagree. While we believe that the factors addressed by the Applicants play an important role in our competitive analysis of the Sprint Nextel merger, we believe that it is appropriate to examine these factors in the context of our case-by-case review. Implementing a more permissive initial screen could result in the exclusion of markets from further scrutiny for which risk of adverse competitive effects exists. We emphasize that our initial identification of markets only constitutes the beginning of the competitive analysis. It is designed to ensure that we do not exclude any geographic areas for which there is some risk of anticompetitive effects.

¹⁶³ With 130 megahertz of spectrum available to other carriers, there could, for instance, be as many as four carriers with at least 30 megahertz of spectrum for the provision of mobile telephony services. Many carriers are competing successfully with far less bandwidth today. *See, e.g., Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 & nn.334-35 (discussing services of Verizon Wireless and Dobson)

¹⁶⁴ *See* Application, Public Interest Statement at 73-74.

¹⁶⁵ CRA Analysis at 24-25.

3. Coordinated Interaction

68. In this section, we examine the potential of the merger of Sprint and Nextel to facilitate anticompetitive coordinated effects by examining the impact of the merger on the same set of factors identified in our analysis of coordinated effects in the Cingular-AT&T Wireless merger. As discussed below, we find that the merger of Sprint and Nextel will not make coordinated interaction among carriers more likely, successful, or complete. We base this finding on our analysis of conditions that are common across, or that typically prevail in, local U.S. markets, and Applicants' analysis of subscriber absorption capacity.

69. In general, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.¹⁶⁶ Accordingly, a merger may create or enhance market power or facilitate its exercise by making coordinated interaction among firms more likely, more successful, or more complete.¹⁶⁷ Successful coordination depends critically on two key factors. The first is the ability of the firms to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction. Rapid detection and punishment of deviations facilitates successful coordinated interaction by lowering the profitability of deviating from the terms of coordination and thereby reducing the incentives to cheat. Terms of coordination need not perfectly achieve a monopoly outcome in order to harm consumers, however. Further, terms of coordination may omit some market participants or dimensions of competition and still result in competitive harm.¹⁶⁸

70. In the *Cingular-AT&T Wireless Order*, we identified a number of factors that may determine whether market conditions are conducive to reaching and enforcing terms of coordination, including the number of firms, transparency of information, firm and product homogeneity, and the presence of mavericks.¹⁶⁹ Based on an analysis of these and other factors, Applicants argue that the proposed transaction poses no significant risk of anticompetitive coordinated effects.¹⁷⁰ Applicants also use a subscriber absorption capacity analysis to evaluate the potential for successful coordination between the two leading firms in a market.¹⁷¹ None of the commenters specifically addressed the potential of the merger to facilitate coordinated effects.

71. *Number of Firms.* In the *Cingular-AT&T Wireless Order*, we noted that a merger may lower the difficulties and costs of reaching and enforcing the terms of an agreement to restrict output and raise price above competitive levels by reducing the number of firms

¹⁶⁶ *DOJ/FTC Merger Guidelines* § 0.1.

¹⁶⁷ *Id.* § 2.1. The *DOJ/FTC Merger Guidelines* define coordinated interaction as comprising actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than by attempting to undercut them. *Id.*

¹⁶⁸ *Id.* at § 2.11.

¹⁶⁹ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-21586 ¶¶ 150-164.

¹⁷⁰ Application, Public Interest Statement at 80-83; CRA Analysis at 47-51 ¶¶ 127-140.

¹⁷¹ Application, Public Interest Statement at 83-86; CRA Analysis at 51-56 ¶¶ 141-151.

necessary to control a given percentage of total supply.¹⁷² As discussed below, however, we find that although a reduction in the number of national competitors by one may provide the remaining carriers with an increased ability and incentive to reach and enforce a coordinated strategy, it is not by itself a sufficient basis for concluding that it will do so with respect to this particular transaction.

72. The merger of Sprint and Nextel will reduce the number of national competitors from five to four, and in some geographic markets there will be fewer than four national competitors as a result of the merger. The Applicants stress that there will still be four national competitors in most large markets and in many smaller markets, and that there will also be a number of regional competitors as well.¹⁷³ The Applicants further note that the Commission stressed in the *Cingular-AT&T Merger Order* that a reduction in the number of competitors and an increase in concentration are not by themselves a sufficient basis for concluding that anticompetitive coordinated effects are likely.¹⁷⁴ We still maintain that a reduction in the number of national carriers by one is not enough, by itself, to make a determination of the likelihood of anticompetitive effects with respect to this particular transaction. However, because the elimination of a national competitor as a result of the merger may provide the remaining carriers with an increased ability and incentive to reach and enforce a coordinated strategy, we have carefully analyzed the other factors that may facilitate coordinated interaction.

73. *Transparency of Information.* Terms of coordination are often easier to reach, and detection and punishment of deviations is often more rapid and more effective, when key information about specific transactions or individual price or output levels is routinely available to rival firms.¹⁷⁵ In this regard, we find that the merger has the potential to increase transparency of information by reducing the number and complexity of offerings, but it is not clear that it will provide the remaining carriers with an increased ability to reach terms of coordination or to detect and punish deviations from a coordinated strategy.

74. U.S. mobile telephony carriers make available a great deal of information about their offerings. Prices and other terms and conditions of service for residential customers are published on carriers' websites, among other places. As the Commission has noted, and as the Applicants have documented in the record for this transaction, carriers routinely monitor their rivals' pricing plans and promotions and use such information to design and modify their own pricing plans and service offerings.¹⁷⁶ While acknowledging such monitoring, the Applicants argue that reaching and enforcing an agreement may be complicated by the number and complexity of pricing plans for residential customers.¹⁷⁷ Although the elimination of another national competitor may reduce the number and complexity of offerings in the marketplace, it is not clear that this transaction would provide the remaining firms with a significantly increased

¹⁷² *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

¹⁷³ CRA Analysis at 48 ¶ 131.

¹⁷⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶150.

¹⁷⁵ *DOJ/FTC Merger Guidelines* § 2.11-2.12.

¹⁷⁶ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581 ¶154; [REDACTED]

¹⁷⁷ CRA Analysis at 49 ¶ 133.

ability to reach terms of coordination or to rapidly detect and punish any deviations from a coordinated strategy.

75. *Firm and Product Homogeneity.* Another market condition that may facilitate the ability to reach terms of coordination is firm and product homogeneity.¹⁷⁸ As discussed below, we find that the merger may narrow asymmetries among the remaining nationwide carriers, but that the significant variation in the market shares and relative positions of the nationwide carriers across local geographic markets will continue to provide an effective constraint on coordinated interaction.

76. Applicants argue that significant asymmetries will remain after the merger of Sprint and Nextel, including product differentiation and the differences in incentives due to the ILEC affiliations of Verizon Wireless and Cingular.¹⁷⁹ According to the Applicants, these differences in firm characteristics are obstacles to any post-merger effort to coordinate pricing. We agree with Applicants that differences resulting from ILEC affiliations by other national wireless carriers may tend generally to inhibit coordination in that the merged entity will face different incentives as an independent wireless carrier than the ILEC-affiliated Verizon Wireless or Cingular. Nevertheless, the extent to which any such difference in incentives will be a sufficient constraint on coordinated interaction is not clear with respect to markets where the merged entity and either Verizon Wireless or Cingular control a share of subscribers that is large enough to make a higher coordinated price profitable to both the merged entity and the ILEC-affiliated carrier.

77. Moreover, the merger of Sprint and Nextel has the potential to facilitate anticompetitive coordinated effects by further narrowing asymmetries among the national carriers. The merger will create a carrier that is more similar in size and market share to Cingular and Verizon Wireless. Since mobile operators with large customer bases may be better able to exploit scale economies and thereby benefit from declining average costs, the merged carrier may enjoy lower average costs which are more closely in line with those facing Cingular and Verizon Wireless. In addition, Sprint already shares the CDMA technology and a focus on wireless data in common with Verizon Wireless, and the acquisition of Nextel's business-oriented customer base may result in a customer mix that is more similar to that of Verizon.

78. On the other hand, it is not clear that this transaction would increase firm homogeneity in such a way as to provide the remaining firms with a significantly increased ability to reach terms of coordination. In addition, the national carriers have different market shares in different geographic areas, explained in part by where they were one of the two original cellular carriers. Thus, for example, Verizon is stronger in the Northeast and Cingular in the South and Midwest. Post-merger, Sprint Nextel would have the largest number of subscribers in some areas, and would be a distant third in others. In some markets, all four national carriers would be present, in others only two. We conclude that this variation in presence, market share and relative positions of the national carriers would make it more difficult for those carriers to reach terms of coordination.

¹⁷⁸ DOJ/FTC Merger Guidelines § 2.11.

¹⁷⁹ CRA Analysis at 49 ¶ 134.

79. *Presence of Mavericks.* In some circumstances, maverick firms can effectively prevent or limit coordinated interaction.¹⁸⁰ Maverick firms are firms that have a greater economic incentive to deviate from the terms of coordination than do most of their rivals. Therefore, a merger may make coordinated interaction more likely, more successful, or more complete if it involves the acquisition of a maverick firm. As discussed below, we find that although the merger does not involve the acquisition of a unique maverick, it may result in the creation of a carrier which has less incentive to deviate from the terms of coordination than either Sprint or Nextel do as independent carriers.

80. Citing the Commission's analysis of mavericks in the context of the Cingular-AT&T Wireless merger, Applicants argue that regional carriers and also other nationwide carriers would remain potential mavericks after the merger of Sprint and Nextel, and conclude that the transaction does not involve the acquisition of a unique maverick.¹⁸¹ We concur that this transaction will not result in the loss of a unique maverick carrier. However, as the Commission has indicated, a relatively small carrier that controls substantially more spectrum than it needs to serve the demands of its currently limited customer base may have a greater incentive to deviate than carriers with larger market shares.¹⁸² This is because the small carrier receives less total benefit from the higher coordinated prices than do carriers with larger market shares and because the small carrier is also well positioned to profit from expanding its sales. The record shows that both Sprint and Nextel claim to have been the first carrier to introduce a number of innovative wireless service offerings and pricing plans, suggesting that each carrier may be considered a potential maverick absent the merger.¹⁸³ By combining two smaller carriers into a single carrier with a larger market share, the merger of Sprint and Nextel may result in the creation of a carrier which has less incentive to deviate from the terms of coordination than either Sprint or Nextel do as independent carriers.

81. *Technology Development.* One factor that could undermine the incentives to coordinate is technological innovation, particularly to the extent that it favors one carrier, or a subset of carriers, for a period of time. As discussed below, we find that carriers' deployment of different wireless network technologies will help make the process of technological development and innovation an effective constraint on coordinated interaction in the U.S. wireless telephony market.

82. Applicants contend that successful coordinated action is less likely because of the dynamic nature of the wireless telephony market.¹⁸⁴ For example, Applicants cite carriers' deployment of next-generation network technologies and the uncertain consumer demand for services provided over these networks, and the lumpiness of investments in wireless markets.¹⁸⁵ Applicants also argue that differences in the positioning of carriers on their technology paths will

¹⁸⁰ DOJ/FTC Merger Guidelines § 2.12.

¹⁸¹ See CRA Analysis at 50 ¶ 137.

¹⁸² Cingular-AT&T Wireless Order, 19 FCC Rcd at 21584 ¶160.

¹⁸³ [REDACTED]

¹⁸⁴ Application, Public Interest Statement at 82; CRA Analysis at 49 ¶ 135.

¹⁸⁵ CRA Analysis at 49-50 ¶ 135.

remain substantial following the merger and will continue to complicate pricing agreement and enforcement.¹⁸⁶ We agree that technological innovation in the market for wireless services will contribute to difficulties in maintaining a coordinated outcome among firms in the market. As explained below, however, the principal reason is the lack of technological standardization in U.S. wireless markets, rather than the process of technological innovation in itself. Evidence from international experience suggests that technological innovation may not be a very effective constraint on coordinated interaction when competing carriers use the same technology.¹⁸⁷

83. We believe that U.S. carriers' use of different wireless standards will tend to undermine the incentive and ability to coordinate for several reasons. Since the types of services offered tend to differ across technologies, the use of multiple standards tends to result in greater product variety and, accordingly, greater differentiation of services offered by carriers using different technologies.¹⁸⁸ Diversified and heterogeneous services make it more difficult for competitors to reach terms of coordination. Other potential advantages of multiple technologies include greater technological competition and greater price competition between operators using competing standards.¹⁸⁹ In particular, competition among carriers using competing incompatible technologies tends to put pressure on carriers to achieve sufficiently high adoption of their technology in order to ensure it survives the "standards war."¹⁹⁰ The pressure to fill their networks may lead carriers to enact price cuts and handset subsidies.¹⁹¹ Moreover, the adoption of a particular standard may enable one or a subset of carriers to gain a temporary competitive edge, which in turn will tend to undermine incentives to coordinate and have a disruptive effect on the ability to reach and enforce terms of coordination. In this regard, we note that CDMA carriers migrating to CDMA2000 1xRTT and 1xEV-DO may gain a temporary competitive advantage because the backward compatibility of more advanced technologies on the CDMA2000 migration path permits handover from 3G to 2G, whereas GSM/TDMA carriers migrating to W-CDMA may be temporarily handicapped by the lack of handover from 3G to 2G.¹⁹²

84. *Response of rivals.* The likelihood of successful collusion between the two or three leading carriers in a market depends on how smaller rivals respond. As discussed below, we find that competitive pressure from smaller rivals will generally provide an effective

¹⁸⁶ CRA Analysis at 49 ¶ 135.

¹⁸⁷ Simon Flannery *et. al.*, *3G Economics a Cause for Concern*, Morgan Stanley, Equity Research, Feb. 1, 2005, at 11 ("*3G Economics a Cause for Concern*"); *Market Analysis – Wholesale Mobile Access and Call Origination*, Document No. 04/118 and 04/118a, Response to Consultation & Notification to European Commission, Commission for Communications Regulation, Dec. 9, 2004, at 44-45 ("*ComReg Document No. 04/118*").

¹⁸⁸ Neil Gandal, David Salant, and Leonard Waverman, *Standards in Wireless Telephone Networks*, Telecommunications Policy, 2003, at 329 ("*Standards in Wireless Telephone Networks*").

¹⁸⁹ *Standards in Wireless Telephone Networks*, at 330.

¹⁹⁰ *3G Economics a Cause for Concern*, at 11. For a general discussion of standards wars in network industries, with digital wireless technologies cited as a case study, see Carl Shapiro & Hal R. Varian, *INFORMATION RULES*, at 261-296 (Harvard Business School Press 1999) ("*Information Rules*").

¹⁹¹ *3G Economics a Cause for Concern*, at 10-11; *Information Rules*, at 273.

¹⁹² *Standards in Wireless Telephone Networks*, at 328; Frank J. Governali, *et al.*, *Wireless Data Prospects Brightening*, Goldman Sachs, Global Investment Research, Apr. 16, 2004, at 6.

constraint on attempts at coordinated interaction by a coalition of market leaders in those markets which have the potential to be dominated by two or three larger carriers of roughly equal size.

85. International experience suggests that a reduction in the number of national mobile operators from five to four may tend to facilitate coordinated interaction when the two leading carriers have a large share of the market, with roughly symmetrical individual market shares so that their incentives are aligned, and the remaining smaller carriers are not an effective constraint on coordination between the two market leaders.¹⁹³ However, in a significant portion of the geographic markets identified in the initial screen, the merged entity will not be one of the two leading carriers, and therefore the subscriber share of the two market leaders will not increase as a result of the merger. With respect to most of the geographic markets in which the merged entity would be one of the two leading carriers after the merger, we find that the combined market share of the two leading carriers would not be large enough, or their individual market shares not sufficiently symmetrical, to be conducive to successful coordinated interaction. In the relatively small number of markets where the combined market share of the top two carriers and the relative symmetry of their individual market shares might otherwise raise concerns about coordinated effects, our analysis of the presence and capacity of the remaining smaller carriers leads us to conclude that competitive pressure from the remaining smaller carriers will be an effective constraint on any attempt by the two leading carriers to align their conduct so as to raise price above competitive levels. This is because when carriers have relatively small market shares the additional profits earned by gaining market share are more likely to exceed those to be gained by agreeing to a higher price but keeping the current market share. Thus, small carriers with sufficient capacity to expand have less incentive to reach an agreement with the large players and greater incentive to cheat on any agreement reached. In addition, apart from the presence and capacity of smaller rivals, as discussed above we believe that successful coordination is more difficult because of the carriers' use of different technologies.

86. A quantitative analysis submitted by the Applicants suggests support for a view that smaller rivals in a market will generally be able to provide an effective constraint on coordinated actions by the larger carriers.¹⁹⁴ The analysis, which the Applicants refer to as a Subscriber Absorption Capacity analysis ("SAC"), evaluates the potential for successful coordination between the two leading carriers in a market by estimating whether the remaining smaller carriers, who are not part of the assumed coordinating group, have the ability to absorb an output reduction equal to 10 percent of the combined subscribers of the two leading carriers if the latter were to attempt a coordinated price increase.¹⁹⁵ The Applicants applied this test to 61 Telephia markets identified by a structural screen in which the merged entity would be one of the two leading firms.¹⁹⁶ The results indicate that rivals would have sufficient capacity to absorb at

¹⁹³ Terence Sinclair, *et al.*, *European Mobile (2) – Swimming with the Sharks: Competitor Review*, Schroeder Salomon Smith Barney, Equity Research: Europe, Sept. 10, 2002, at 10 and 15; Timothy Horan *et al.*, *International Wireless Trends Reinforce Our Bullish View On U.S. Wireless*, CIBC World Markets, Equity Research, June 6, 2005, at 8; *ComReg Document No. 04/118*, at 40-43, 55-59.

¹⁹⁴ CRA Analysis at 51-56 ¶¶ 140-151.

¹⁹⁵ CRA Analysis at 51 ¶ 141.

¹⁹⁶ CRA Analysis at 51-52 ¶ 142.

least 10 percent of the subscribers of the two leading carriers in all but six of these markets.¹⁹⁷ Based on a closer examination of these six markets, the Applicants further argue that the merger of Sprint and Nextel is unlikely to result in adverse coordinated effects in these markets as well.¹⁹⁸

87. The merger of Sprint and Nextel may also tend to facilitate coordinated interaction in markets where it results in three roughly equal-sized carriers controlling a large share of subscribers, and competition from the remaining smaller rivals is not an effective constraint on coordination among the top three carriers. However, only a few geographic markets identified in the initial screen meet these structural criteria. Based on a closer examination of the presence and capacity of smaller rivals and the network technologies deployed in these few markets, we conclude that competitive pressure from smaller carriers that are not part of the coordinating group will provide an effective constraint on coordinated interaction in these markets.

88. As noted previously, non-facilities based service options such as MVNOs and resellers have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior. In particular, independent resellers and MVNOs may be able to undercut the market leaders and thereby provide an additional constraint on coordinated interaction in markets which have the potential to be dominated by the two or three largest carriers.

89. *Conclusions.* On balance, we are persuaded that this transaction will not pose a risk of harm from collusive behavior in the local markets caught by the initial screen. While this determination is difficult due to the reduction of national carriers from five to four, we find that three conditions in U.S. wireless markets will generally provide effective constraints on coordinated interaction. First, the significant variation in the market shares and relative position of the nationwide carriers across local geographic markets greatly increases the complexity and difficulty of reaching terms of coordination. Second, the use of competing incompatible wireless standards undermines the ability and incentive to coordinate by promoting greater product heterogeneity and by enabling certain carriers to gain a temporary competitive advantage over rivals through the adoption of a particular standard. Third, smaller rivals with sufficient capacity to respond to attempted coordination by the two or three leading carriers in local geographic markets will have a strong incentive not to coordinate their actions with those leading carriers. We have examined the individual geographic markets identified in the initial screen in light of our analysis of these constraints, and based on this analysis we conclude that the merger of Sprint and Nextel is unlikely to alter conditions in these markets in such a way as to make coordinated interaction more likely, more successful, or more complete.

4. Unilateral Effects

90. As discussed below, we find that this merger is unlikely to result in adverse unilateral effects. Although the merger would result in the elimination of a national competitor, four national competitors (Sprint Nextel, T-Mobile, Cingular, and Verizon Wireless) would

¹⁹⁷ CRA Analysis at 52 ¶ 144.

¹⁹⁸ CRA Analysis at 53-55 ¶¶ 145-150.

remain, in addition to several regional carriers, including ALLTEL. In addition, Sprint Nextel would not be the largest competitor post-merger in most markets, and it would have a relatively small market share post-merger. For markets in which these characteristics do not hold, it appears that other firms have the incentive and ability to add subscribers in response to any attempted exercise of market power by the merged firm. In addition, the presence of carriers who hold spectrum but are not currently offering service may further lower the risk of adverse unilateral effects in some cases. The merger is also likely to result in efficiencies that would lead to pressure to reduce prices, further lowering the risk of adverse unilateral effects.

91. Adverse unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing price, suppressing output, or decreasing the quality of its service.¹⁹⁹ Our finding that this merger likely will not lead to adverse unilateral effects is based mainly upon an analysis of market share, substitutability between Sprint and Nextel, competitor repositioning and expansion, and efficiencies. We discuss each of these factors below.

a. Market Shares

92. The presence of few competitors or potential entrants that consumers consider to be good substitutes for the merged firm, combined with a large market share by the merged entity, may increase the likelihood of adverse unilateral effects.²⁰⁰ However, a large combined market share alone is not sufficient to conclude that adverse unilateral effects are likely. When a merged firm would hold a large, post-transaction market share, it is necessary to evaluate the number of competitors and potential entrants who are close substitutes for the merging parties in order to determine the likelihood of competitive harm.

93. The Applicants argue that the greatest risk of adverse unilateral effects arises if, in a particular market, the merged firm becomes the leading firm by a large margin.²⁰¹ They also claim that this is not the case for most local markets, and that Sprint Nextel would have a market share greater than 50 percent in only one market, Brownsville, Texas [REDACTED].²⁰² We agree that post-transaction, Sprint Nextel will not be the largest firm in most markets, and will generally have a relatively low market share. Although we generally agree with the Applicants that the risk of adverse unilateral effects increases when the merged firm becomes the leading firm in a particular market by a large margin, the potential for adverse unilateral effects also exists in markets where the merged firm has a market share less than 50 percent or is not the

¹⁹⁹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115. The term “unilateral” refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions may alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. In the mobile telephony industry, changes in behavior may include delays in service quality improvements or adverse adjustments to plan features without corresponding decreases in plan prices.

²⁰⁰ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-571 ¶ 117.

²⁰¹ CRA Analysis at 32-33 ¶ 85.

²⁰² [REDACTED]

leading firm in the market. Therefore, our analysis of unilateral effects incorporates the other factors described below.

b. Product Differentiation and Substitutability

94. As explained below, we assess the degree of substitutability between Sprint's and Nextel's mobile telephony services, and the effect that this has on the risk of adverse unilateral effects. On balance, we find there are several mobile telephony carriers that provide services that consumers view as good substitutes for Sprint's and Nextel's offerings. Therefore, although we find that some consumers may view Sprint and Nextel to be good substitutes, the availability of several equally attractive options significantly reduces the risk of adverse unilateral effects.²⁰³ We also assess the substitutability of Sprint's and Nextel's PTT offerings and find that they are not close substitutes. In addition, several firms currently offer PTT services, and additional firms are likely to offer this service in the future, suggesting there is little risk of adverse unilateral harm to customers interested in PTT.

95. We found in the *Cingular-AT&T Wireless Order* that the market for mobile telephony service in the United States appears to be differentiated.²⁰⁴ Wireless service carriers do not offer completely homogeneous services. Rather, carriers compete vigorously on the basis not only of price, but also of other numerous non-price features such as call quality, thoroughness of geographic coverage, and plan features (e.g. PTT).²⁰⁵ While carriers can change some of these attributes relatively quickly, other attributes such as quality and coverage require investments in spectrum and infrastructure and are not easily modified. Generally, our analysis of product differentiation focuses on the characteristics that carriers are unable or unlikely to change quickly, and the potential for anticompetitive harms that may result.

96. In a market characterized by product differentiation, a firm's ability to raise prices is constrained in part by the threat that its customers will shift their purchases to products that are close substitutes. If a firm merges with another firm that produces a close substitute, some of the lost sales and profits that will occur if the first firm raises its prices will be offset by an increase in sales of the close substitute made by the firm with which it has merged.²⁰⁶ The more a buyer of a particular product considers the newly acquired product to be their next choice, the greater the possible price increase. Therefore, if the services offered by Sprint and Nextel are viewed as close substitutes by significant numbers of customers, the merger of the two firms could remove

²⁰³ We note that we do find that Nextel is somewhat differentiated from the other mobile telephony carriers by its PTT service and focus on business customers. But we do not find that Sprint and Nextel are significantly worse substitutes for one another than they are for the other mobile telephony carriers.

²⁰⁴ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 116.

²⁰⁵ There are several service quality dimensions including the probability of blocked and dropped calls, and the quality of the connection. In addition, customer support is an important dimension of service quality. A carrier's coverage includes locations where the service is available either on the carrier's own network, or on the network of one of its roaming partners. Plan features include various dimensions of subscriber usage such as the number of voice or data minutes provided by the plan. Types of usage are typically defined by "buckets" of minutes and are differentiated by the time at which a call is placed, the location from which it is placed, and the destination to which it is directed. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21572-73 ¶¶ 123-126.

²⁰⁶ *Antitrust Law Developments (Fifth)*, ABA Section of Antitrust Law at 344 (2002).

a constraint on Sprint's and Nextel's ability to raise prices.²⁰⁷ Alternatively, if most customers consider Sprint and Nextel to be more distant substitutes for each other, or have multiple choices of equally attractive substitutes, then anticompetitive unilateral effects are less likely to occur or may be less significant.

97. The Applicants argue that Sprint and Nextel are not close substitutes, which if true, would suggest that the incentive and ability to unilaterally increase price is reduced.²⁰⁸ The Applicants claim that Sprint and Nextel focus on different segments of mobile telephony customers – Nextel on the enterprise market and Sprint on the residential market. The record indicates that [REDACTED]²⁰⁹ The Applicants also claim that Nextel offers an enterprise-friendly push-to-talk feature, and that Sprint promotes color screen handsets, picture phones, data use, and elimination of overages which are designed to appeal to non-enterprise customers.

98. We agree with the Applicants that Nextel is more focused on enterprise customers than Sprint. In addition, we find that Nextel is somewhat differentiated from all of the other national mobile telephony carriers because its service is more heavily oriented towards enterprise customers than the other firms²¹⁰ and because it dominates the corporate liable segment.²¹¹ However, recently Nextel has increased its appeal to the non-enterprise segment of the mobile telephony market. In May 2003, Nextel acquired sixty-six percent of Boost Mobile, which has been successfully marketing its prepaid service to the consumer market (especially to the youth demographic).²¹²

99. Although we agree with the Applicants that Sprint and Nextel generally do not share a common customer focus, the evidence in the record indicates that there are some product dimensions and customer groups for which Sprint is a closer substitute for Nextel than other mobile telephony carriers. [REDACTED]²¹³

100. Further, the Applicants argue that the diversion ratios between Sprint and Nextel should be relatively small because they are not close substitutes.²¹⁴ The Applicants support these

²⁰⁷ That is, Sprint's presence in a market may have been a constraint on Nextel's prices, and Nextel's presence in a market may have been a constraint on Sprint's prices. However, it is not necessary for the products to be the next best substitutes for there to be competitive harm arising from unilateral effects, although it makes the harm more likely. See Gregory Werden, *Demand Elasticities in Antitrust Analysis*, 66 Antitrust L.J. 408 (1998).

²⁰⁸ CRA Analysis at 33-39 ¶¶ 88-106.

²⁰⁹ [REDACTED]

²¹⁰ [REDACTED]

²¹¹ [REDACTED]

²¹² See *The New Push Behind P2T*, *Wireless Review*, May 1, 2005.

²¹³ [REDACTED]

²¹⁴ CRA Filing at 33-39 ¶¶ 88-106. A diversion ratio is the fraction of sales lost by carrier A that are captured by carrier B (for example, in the event of a price increase by carrier A). If carrier A and carrier B are close substitutes, then we would expect that many customers would switch to carrier B in the event of a price increase by carrier A. The higher the diversion ratio between the merging carriers, the greater is the incentive of the merged firm to raise price. This is due to the fact that as the diversion ratio between the merging parties increases, the amount of sales that would be 'recaptured' by the merged firm, in the event of a price increase for the products and services of either of the merging parties, increases.

arguments with data from Sprint's and Nextel's customer exit surveys,²¹⁵ and Wireless Local Number Portability ("WLNP") data.²¹⁶ Using these data sources, the Applicants also claim that both Sprint's and Nextel's customers regard Cingular and Verizon Wireless as the closest substitutes for mobile telephony services.²¹⁷ The Applicant's analysis of the WLNP data shows that of the subscribers that left Nextel in 2004, [REDACTED] percent switched to Verizon Wireless, [REDACTED] percent switched to Cingular-AT&T Wireless, and [REDACTED] percent switched to Sprint. Of the subscribers who left Sprint in 2004, [REDACTED] percent switched to Verizon Wireless, [REDACTED] percent switched to Cingular-AT&T Wireless, and [REDACTED] percent switched to Nextel. The Applicants found similar results when analyzing the customer exit survey data, including survey data where customers responded they switched mobile telephony carriers for price reasons.

101. We have also conducted an analysis of the substitutability between Sprint, Nextel and other mobile telephony carriers using WLNP data.²¹⁸ We found that the overall pattern of the WLNP data generally indicates that there is significant substitutability among *all* five nationwide carriers. In particular, for the customers who leave a given carrier, at least [REDACTED] percent of those customers go to each of the other four national firms. This indicates that a portion of each of the nationwide carriers' customer base views each of the other national carriers as close substitutes. This mutual substitution appears to be present despite product differentiation that exists across the national firms, and indicates that the services provided by the other nationwide carriers may be effective substitutes for those of the Applicants.

102. However, for several reasons we have limited our reliance on the porting data for predicting the likely diversion of customers between Sprint and Nextel if either carrier were to change its offerings.²¹⁹ The survey data, which indicate the reasons a subscriber switches to a

²¹⁵ The exit surveys were conducted on subscribers when they switched away from Sprint or Nextel. These customers were asked which carrier they were switching to.

²¹⁶ WLNP was required in the 100 largest markets on November 24, 2003, and required nationwide on May 24, 2004. The WLNP data include each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier. The WLNP data is provided to the Commission by NeuStar, Inc.

²¹⁷ We note that this suggests that on a continuum of product characteristics, Cingular Wireless and Verizon Wireless lie between Sprint and Nextel.

²¹⁸ Using WLNP data, we were able to gauge movements of customers among the mobile telephony firms, and determine the aggregate customers flows between firms for 2004. This analysis was limited to markets in which all of the nationwide carriers were serving customers. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21574 ¶ 130.

²¹⁹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21574-575 ¶ 131. The Applicants discuss four limitations to the usefulness of the WLNP data. First, WLNP data involve all switches, not just those that are a response to a price increase. Second, because customers often delay switching until their two-year contracts have expired, the act of switching may substantially lag the decision to switch. Therefore, while it is reasonable to assume that the carrier being ported to is the customer's current first choice provider, it may not be reasonable to assume that the carrier being ported from is any longer the customer's second choice. Third, there are two measures of switching, customers that are porting in and those that are porting out, and there may be substantial differences between the two. Fourth, WLNP data do not identify customers that either decrease wireless usage or drop wireless services. See CRA Analysis at 35-36 ¶¶ 94-97. In addition, we note that the porting data represent a small sample of the (continued....)

new carrier, may be somewhat more useful for predicting the likely diversion of customers between Sprint and Nextel.²²⁰ However, these data also have limitations and therefore, we do not believe that these data should be relied on exclusively to infer the likelihood of adverse unilateral effects. For example, the survey data still suffer from the problem that one cannot infer from the survey results whether or not the carrier that a subscriber is leaving is that subscriber's second choice.

103. Price, as well as non-price attributes, is an important factor for purposes of determining the substitutability among carriers. Therefore, to assess whether consumers could find comparable pricing plans offered by other carriers, we also conducted our own survey of national plans offered by the nationwide carriers. The survey was limited to plans with a price of approximately \$40 per month. The prices and other plan features that were surveyed were limited to Internet offerings. This survey found that Nextel offered the smallest bucket of peak minutes of the five national carriers (400 minutes), and that T-Mobile offered the highest (600 minutes). Cingular and Verizon Wireless each offered 450 minutes.²²¹ Sprint offered 400 minutes. Therefore, it indicates that Nextel's prices may be somewhat more similar to Cingular's and Verizon Wireless's than they are to Sprint's.

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population of subscribers. It is not clear whether this sample of the population would be representative of the population as a whole. If the population of subscribers who port their numbers have different preferences on average than the population of subscribers who would likely switch carriers in the event of an adverse change to either Sprint or Nextel's service offerings (e.g., a decrease in service quality), then the porting data would result in misleading estimates of diversion ratios. In addition, any price change or decrease in the numbers of minutes offered by a combined Sprint Nextel would likely affect customers who are not currently customers of either Sprint or Nextel. Current customers would not be affected as much by price changes (although they would be affected by service quality changes), especially those who are currently on contract. When carriers change their prices, they don't generally change prices for current customers who do not choose to switch plans, although we realize that may not be the case in the future.

²²⁰ The surveys are conducted over a sample of all customers who leave either Sprint or Nextel, and are not restricted to customers who port their numbers. In addition, the customers who leave for price reasons are more likely to be relatively satisfied with their current service, and are more likely to be reacting to price decreases or promotions by other carriers. In most cases, the customers who switch would not be reacting to price increases by their current carrier, as carriers generally do not increase price for current customers, and definitely would not increase price for customers who are on contract. Therefore, the main harm of a price increase by Sprint or Nextel may be to customers who are not currently Sprint or Nextel customers. Thus, the survey data would be useful to predict the risk of adverse unilateral effects only if the population leaving Sprint or Nextel for price reasons have the same distribution of preferences on average as the populations of customers who do not currently subscribe to a mobile plan, who subscribe to one of Sprint or Nextel's rivals and are considering switching, or current Sprint or Nextel customers who would like to switch to another plan or purchase a new phone while remaining with the same carrier.

²²¹ See Cingular Individual Rate Plans, at <http://onlinestorez.cingular.com/cell-phone-service/wireless-phone-plans/cell-phone-plans.jsp?source=INC230064> (last visited July 28, 2005); Nextel Individual Rate Plans, at http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans?id4=left_nav;rateplans (last visited July 28, 2005); T-Mobile Individual Rate Plans, at <http://www.t-mobile.com/plans/Default.asp?tab=national>; Sprint PCS Individual Rate Plans, at http://www1.sprintpcs.com/explore/servicePlansOptionsV2/FreeClearFairFlexiblePlans.jsp?FOLDER%3C%3Efolder_id=1661521&CURRENT_USER%3C%3EATR_SCID=ECOMM&CURRENT_USER%3C%3EATR_PCode=N one&CURRENT_USER%3C%3EATR_cartState=group&bmUID=1122581488597 (last visited July 28, 2005).

104. Finally, there are a number of large regional carriers including ALLTEL, USCC, and Dobson that may provide competitive options to Sprint and Nextel in certain local markets. In particular, we note that ALLTEL has gained coverage and customers since its acquisition of Western Wireless.²²² ALLTEL now covers 33 states and approximately 72 million people.²²³ ALLTEL also has an advantageous roaming agreement with Verizon Wireless, which allows it to provide competitive national plans.²²⁴ Therefore, it may serve as an effective substitute to the national firms. In addition, the presence of MVNOs provide further competitive options.

105. *Push-to-Talk*. A central feature of Nextel's mobile telephony service is its PTT service, and therefore we analyze whether other mobile telephony carriers' PTT offerings are close substitutes for Nextel's offerings. SAFE Coalition argues that Sprint's ReadyLink service is Nextel's only significant national competitor in integrated dispatch/mobile telephony, and that Verizon Wireless's PTT offering is generally not viewed as a good substitute for Nextel's PTT features for business customers because Verizon Wireless's service has a significantly delayed connect time which renders it unsuitable for the instant communications needed by these customers.²²⁵

106. We find that Nextel is somewhat differentiated from all of the other national firms mainly by its PTT service, which currently has a strong advantage over all other PTT offerings. Evidence in the record indicates that Nextel is the market leader in terms of PTT subscribers and performance.²²⁶ In addition, Nextel's PTT service is integrated into most of its pricing plans, while other PTT carriers (ALLTEL, Sprint, and Verizon Wireless) price their PTT feature as an additional charge to a customer's mobile telephony plan.²²⁷

107. We find that Sprint does not currently offer a PTT service that is a close enough substitute for Nextel's offering that the merger of Sprint and Nextel would increase the probability of adverse unilateral harm to PTT customers. It appears that ALLTEL's PTT service may be a relatively close substitute for Nextel's in certain respects, compared to Sprint's and Verizon Wireless's PTT services.²²⁸ Both ALLTEL's and Nextel's in-call latency are [REDACTED], compared to in-call latency of [REDACTED] for Sprint and Verizon Wireless. In addition, both Nextel and ALLTEL offer group calling for large groups; a maximum of [REDACTED] for Nextel and [REDACTED] for ALLTEL, compared to Sprint's maximum group of five. Verizon Wireless does not offer group calling for new customers. In addition, Verizon Wireless's call set-up time used to be the slowest ([REDACTED]) for Verizon Wireless,

²²² See Application Transferring Control of Licenses Held by WWC Holding Co., Inc. to Widgeon Acquisition LLC, File No. 0002016468 (filed Jan. 24, 2005) ("Application").

²²³ See *ALLTEL-Western Wireless Order*, 2005 WL 1693557 ¶ 11.

²²⁴ Bear Stearns, Equity Research, *U.S. Wireless Services*, June 2005, p. 60. The contract goes through 2010.

²²⁵ SAFE Petition to Deny, Affidavit of John Komorowski, at 5.

²²⁶ [REDACTED]

²²⁷ Nextel offers its Direct Connect service for \$0.10 per minute, while ALLTEL offers Touch2Talk at \$15 per month national unlimited, Sprint offers Ready Link at \$10 per month, and Verizon Wireless offers One-to-One Push to Talk at \$1.99 per month. Wireless Review, *The new push behind P2T*, May 1, 2005.

²²⁸ It appears that Sprint offers a slightly closer substitute for Nextel's PTT service than Verizon Wireless.

[REDACTED] for Sprint,²²⁹ [REDACTED] for ALLTEL, and [REDACTED] for Nextel), although Verizon Wireless's call set-up time may now be faster and comparable to Sprint's since Verizon Wireless re-launched its PTT service in February 2005.²³⁰ We therefore find that Nextel currently has a significant advantage in its push-to-talk service, in part due to its iDEN technology. However, improvements in PTT service which use other mobile telephony technologies may reduce Nextel's advantage in the future. Further, the availability of PTT may become more widespread. For example, USCC has recently introduced its own PTT service.²³¹ Moreover, additional carriers may begin to offer this service.²³² While Cingular has not announced a PTT service offering, some analysts believe that later this year Cingular may announce that it will offer a PTT service based on the recently adopted Push To Talk Over Cellular (PoC) standard.²³³ Therefore, it appears that other carriers may offer further competitive PTT options in the future, supporting our conclusion that risk of adverse unilateral effects is low for PTT.

c. Competitive Responses by Rivals

108. Two factors that may affect the risk of adverse unilateral effects in a differentiated products market are the ability of rival firms to replace competition lost through the merger by repositioning their product offerings (*i.e.*, changing their products or offering new ones similar to those offered by the merged firm) and their ability to absorb new customers if the merged firm raises its prices.²³⁴ As to the second point, rival wireless carriers who lack sufficient spectrum to add numerous subscribers will provide less competitive constraint on the merged firm.²³⁵

109. In a given market, if a firm is already present and has comparable service coverage to the merged entity, it may be able to reposition in the short run by adjusting its pricing, plan features, handsets, and advertising to become more competitive with the merged

²²⁹ [REDACTED]

²³⁰ [REDACTED]

²³¹ See US Cellular SpeedTalk website, at http://mrtmag.com/news/intheworks/us_cellular_adds_walkie-talkie_service/ (last visited July 27, 2005); USCC Comments at 11 (commenting that its push-to-talk capability was being developed with rollout anticipated in 2005).

²³² Wireless Week, *Battling PTT's Lackluster Performance. Limited handset models, performance issues and Nextel's competitor fervor have kept alternative PTT offerings from living up to expectations*, Vol. 11; Issue 7, March 15, 2005.

²³³ See <http://rcrnews.com/news.cms?newsId=23023> (accessed June 16, 2005). In addition, the Open Mobile Alliance held an event in June 2005 in which executives from Cingular participated in a panel discussion on the importance of PoC standardization and their commitment to the new spec. See *OMA announces PoC 1.0 spec*, Telephony Online, June 14, 2005. The PoC standard supports one-to-one and one-to-many PoC sessions and will eventually allow interoperability between PTT services provided by different network operators. *Id.*

²³⁴ *DOJ/FTC Merger Guidelines* § 2.212. We note that capacity is relevant in both differentiated products markets and homogeneous products markets. In the case of differentiated products markets, the firms must not only have the capacity to serve new customers, but must also have the incentive and ability to reposition its product lines in response to a price increase by the merged firm.

²³⁵ Adequate spectrum is a necessary, but not sufficient, condition for the mitigation of potential harm from unilateral effects.

firm's products, and thus replace the competition that had existed between the merging firms.²³⁶ In many cases it will be feasible for firms to add customers quickly because excess capacity is often available and because non-trivial increases in the capacity to serve customers can be realized rapidly in established cellular and PCS mobile radio systems. However, there are limits to a carrier's ability to reposition. For example, firms may not be able to quickly expand their operating footprints, purchase additional spectrum if needed, secure tower siting permits, improve overall quality, or deploy a new technology.

110. In addition to carriers' current ability to absorb new customers, expected increases in penetration and usage increase the likelihood that the merged entity's rivals will have the capacity to absorb additional subscribers in the future. Existing operators will often have the capacity to attract customers and increase output should the merged entity attempt to exercise market power to the detriment of consumers.²³⁷ We emphasize that although excess capacity by Sprint Nextel's rivals is a necessary condition to allow absorption of customers, it is not sufficient to insure that Sprint Nextel's rivals would have the incentive to reposition. At a minimum, however, when a firm is present in a market and has comparable service area coverage, the potential for competitive response is an important factor.

111. The Applicants submitted an analysis which predicts the ability of other carriers to absorb 10 percent of Sprint's and Nextel's subscribers in response to a small but significant and non-transitory price increase by the merged firm. This analysis, which the Applicants refer to as a Subscriber Absorption Capacity (SAC) analysis, estimated the ability of rivals to absorb additional subscribers, given their existing spectrum holdings and technology, in each BTA in the country that was identified using the Commission's initial screen criteria.²³⁸ The Applicants' SAC test indicates that Sprint's and Nextel's rivals would have more than sufficient excess capacity to absorb 10 percent of Sprint's and Nextel's subscribers in all but seven BTAs. The applicants then examined those seven BTAs more closely, and presented evidence indicating that the merger would be unlikely to have adverse competitive effects in any of the BTAs identified by their initial screen.²³⁹ We agree that the Applicants' SAC study provides some evidence that the risk of adverse unilateral effects is low.²⁴⁰

²³⁶ One recent example of repositioning is the evolution of Nextel, moving from a firm solely focused on business workgroup customers, to advertising for (post-paid) residential customers, to launching a pre-paid service, to its current sponsorship of NASCAR.

²³⁷ For example, 10 percent of Sprint and Nextel's combined national subscriber base as of the first quarter of 2005 is only about 21 percent of the total 2004 net adds for carriers other than Sprint and Nextel. In addition, Verizon Wireless, Cingular Wireless, and T-Mobile individually had more net adds in 2004 than 10 percent of Sprint and Nextel's combined national subscriber base as of the first quarter of 2005. Glen Campbell et al., *Global Wireless Matrix IQ05*, Merrill Lynch, Global Securities Research and Economics Group, June 27, 2005, at 148-149. Further, the amount of advertising expenditures for the five nationwide operators indicates that all of the carriers are vigorously attempting to increase their subscriber base. Therefore, in general carriers are likely to have capacity to absorb additional subscribers. The five nationwide carriers spent a total of \$3.9 billion on advertising in 2004, up 9 percent from 2003, and up 24 percent from 2002. See Simon Flannery, et al., *Wireless Carrier Advertising Remains Intense*, Morgan Stanley, Equity Research, May 18, 2005, at 2.

²³⁸ CRA Analysis at 42-47 ¶¶ 113-126; see also *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584 ¶¶ 95-112.

²³⁹ We also examine these seven BTAs as part of our market-specific review in Appendix C.

²⁴⁰ None of the petitions to deny or comments challenged this study.

112. This conclusion is consistent with our finding in the *Cingular-AT&T Wireless Order*.²⁴¹ As part of our investigation of the Cingular-AT&T Wireless merger, we performed an analysis of the capacity of other firms to absorb subscribers who would prefer to change carriers in response to an attempted exercise of market power by the merged firm. The results of our study indicated that, for most of those markets caught by the initial screen, Cingular and AT&T Wireless's rivals collectively possessed the capability to respond to a unilateral price increase by absorbing at least 10 percent of the combined entity's market share.²⁴²

113. As the merger of Cingular and AT&T Wireless occurred so recently, we believe that our finding in the *Cingular-AT&T Wireless Order* provides evidence that is relevant in this instance.²⁴³ The level of Sprint's and Nextel's spectrum aggregation in almost all markets will be lower than the amount of spectrum held by Cingular and AT&T Wireless.²⁴⁴ Therefore, the amount of spectrum held by Sprint's and Nextel's rivals will be generally greater than the amount that was held by Cingular's and AT&T Wireless's rivals. In addition, the number of the combined Sprint-Nextel subscribers will generally be lower than the number of the combined Cingular-AT&T Wireless subscribers. Thus, we believe that our finding in the *Cingular-AT&T Wireless Order* provides some evidence that in most markets it is likely that Sprint and Nextel's rivals will have the capacity to absorb significant numbers of customers.

114. We have also examined the percent of population covered and the percent of land covered for each carrier in each market in which we believed that the proposed merger of Sprint and Nextel would pose some risk of adverse unilateral effects.²⁴⁵ We found in all the relevant markets that the numbers of carriers with adequate population and land coverage significantly lowered the risk of adverse unilateral effects as a result of this transaction. We believe that a combination of the analysis discussed in the *Cingular-AT&T Wireless Order*, our analysis of population and land coverage, and the study submitted by the Applicants, allows us to conclude that Sprint's and Nextel's rivals likely will have the ability to absorb customers and thwart an attempted exercise of market power by Sprint Nextel.

d. Marginal Cost Reductions

115. The Applicants claim that the Sprint-Nextel merger will create substantial synergies, including efficiencies that will lead to pressure to reduce wireless prices. They claim that certain cost reductions would create incentives for the merged firm to reduce its price in order to sell more output. We find that the merger is likely to result in marginal cost reductions.²⁴⁶ Marginal cost is the increment, or addition to costs that results from producing one

²⁴¹ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21584 ¶ 136.

²⁴² *Id.*

²⁴³ Although the relevant markets in this instance may differ from the markets analyzed in the *Cingular-AT&T Wireless Order*, we believe that the results provide some evidence supporting the conclusion that Sprint's and Nextel's rivals may have the capacity to absorb subscribers.

²⁴⁴ Sprint and Nextel will have more than 60 MHz in only one market, and in most markets they will hold well below that amount. CRA Filing, at 28. Sprint and Nextel will have 67.5 MHz of spectrum in Honolulu, HI.

²⁴⁵ *See supra* Section V.B.2.b.ii.

²⁴⁶ Marginal costs that will potentially be reduced include costs for backhaul traffic, costs for IT, billing, customer care, sales, marketing costs, and roaming expenses.

more unit of output.²⁴⁷ Marginal cost reductions may reduce the merged firm's incentive to elevate price, and thus are relevant to our analysis of unilateral effects.²⁴⁸ We find that the likelihood of marginal cost reductions further supports our conclusion that the risk of adverse unilateral effects is low.²⁴⁹

e. Conclusion

116. In conclusion, we find that this transaction does not pose a risk of harm from unilateral effects. We find on balance that there are several mobile telephony services that can serve as good substitutes for the services of Sprint and Nextel. Therefore, although we find that some consumers may view Sprint and Nextel to be good substitutes, the availability of several equally attractive options significantly reduces the risk of adverse unilateral effects. We have examined market shares, and the number of carriers with substantial coverage in the geographic markets identified by the initial screen. This analysis, in conjunction with our finding that marginal cost reductions may reduce the merged firm's incentive to elevate price, indicates that adverse unilateral actions by Sprint Nextel are unlikely. In addition, the Applicants' SAC analysis indicates that Sprint Nextel's rivals will have capacity to absorb subscribers, and thus supports our finding that adverse unilateral action on the part of Sprint Nextel is unlikely. Further, we find that Sprint's PTT service is not currently a close substitute for Nextel's PTT service and that there are likely to be additional competitive PTT offerings in the future, suggesting there is little risk of adverse unilateral harm to customers interested in PTT.

5. Market-by-Market Evaluation

117. In this section, we build on our general analyses of likely competitive effects by undertaking a more granular analysis of local markets. That is, we have found, based on conditions that are common across U.S. markets (such as technological heterogeneity) and on typical conditions prevailing in most local markets (such as number of firms and market shares) that both collusive behavior and adverse unilateral effects are unlikely. Here, we consider individual markets to determine whether conditions are such that localized harm from the merger would be likely. While all local areas are scrutinized, among those to which we pay particular attention are the areas initially identified as of potential concern by the Applicants' SAC analysis.

118. In undertaking this market-by-market analysis, we consider variables that the general analyses indicate are important for predicting the incentive and ability of carriers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output. These include: the total number of rival carriers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the merger; the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the

²⁴⁷ Carlton, Dennis W. and Jeffrey M. Perloff, *Modern Industrial Organization*, third edition, 2000, p.29.

²⁴⁸ See *Merger Guidelines* § 4.

²⁴⁹ These cost reductions are discussed in depth in the Public Interest Benefits section. See *infra* Section V.A.7.

rival carriers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market. Thus, for example, if our count of the number of rival carriers and our scrutiny of their network coverage in a specific market indicate that the response of rival carriers will likely be sufficient to limit the ability and incentive of the combined entity to raise price, we find that the transaction will not cause unilateral harm to competition even in the presence of a relatively high post-transaction market share for the combined entity. We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we find that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in the majority of the market.

119. Based on our examination of these variables and the interaction among them, we find that there are no markets in which the transaction is likely to result in competitive harm. First, we find that competitive harm is unlikely in each CEA in which there will be four or more competitors present post-transaction with thoroughly built-out networks, adequate bandwidth, and the ability to offer competitive nationwide service plans.²⁵⁰ This finding applies to the bulk of the CEAs flagged for further review by the initial screen, including all the largest CEAs caught by the screen. Second, at the other extreme, we find that there are no CEAs in which the merger would reduce the number of competitors to two or fewer, a merger consequence that we would view as presenting a likelihood of competitive harm. Third, regarding all remaining markets, those not falling into either of the categories above, we find that competitive harm is unlikely as well. In many of these markets, post-merger there will be a reduction from four to three in the number of firms fully built out and able to offer national pricing plans. However, there are other factors that reduce the risk of harm. In many CEAs, for example, there are one or more other firms offering competitive nationwide service that have a significant—but not fully built-out—presence. We find that firms in this situation have a realistic ability to expand their presence and be effective competitive constraints in these markets. In all other cases, there are one or more regional firms that are extensively built out and have achieved significant market share; these firms, combined with the merged entity, other competitors with nationwide service plans, and circumstances relevant to each specific market, results in the merger not likely resulting in competitive harm. We find that these strong regional firms are closely comparable alternatives for many consumers in these markets. And it is not the case for any of these markets that the merged firm's market share would be so high as to indicate likely competitive harm.

120. Finally, while we reach no firm conclusions about the efficacy of the Applicants' SAC analysis as an identifier of potentially anticompetitive markets, we have, out of an abundance of caution, evaluated those local markets that the SAC analysis flagged. As discussed in detail in Appendix C, we find that competitive harm is unlikely there.

121. As a part of our market-by-market analysis, we have verified that where we find that a firm is likely to be an effective competitive constraint, it in fact has sufficient bandwidth to enable it to play that role. We recognize that the nationwide firms other than the Applicants have

²⁵⁰ We do not find here that any hypothetical five to four consolidation would be competitively innocuous. Rather, we find this is so only for the actual situations that arise as a result of this transaction, based on our review of the other relevant circumstances such as the merged entity's market share.

20 megahertz or less of spectrum available in some major markets. This is most often true of T-Mobile. However, in all but the largest markets 20 megahertz, or even less, may be adequate in the near term. Moreover, to the extent that T-Mobile—or any other firm—competing with the merged entity might be spectrum constrained as growth occurs, we note that we plan to make Advanced Wireless Services spectrum available at auction as early as June 2006.²⁵¹ This constitutes 90 megahertz of capacity, nationwide.

122. The absence of any local markets in which competitive harm would be expected as a result of the merger appears to reflect the fact that Sprint and Nextel have typically been the third, fourth, or later entrants to a local market. Sprint and Nextel were not among the early A and B block cellular providers when mobile telephony was licensed on a duopoly basis with only two licenses per market. Rather, we find that in markets where Sprint and Nextel are both substantially built out, there are at least two other providers with a significant presence (the original A and B block cellular providers or their successors-in-interest), and often more than two other providers are present. Similarly, while there are markets in which Sprint has attained a leading market share and other markets in which Nextel has attained a leading market share, there are no local markets in which both of the Applicants have the dominant market shares that would suggest adverse competitive harm is likely.

6. Roaming

123. In this section, we consider the potential vertical or other non-horizontal harms of the proposed transaction in the mobile telephony market. The only issue of this type on the record or that we identify in our independent analysis are the possible impacts of the proposed transaction on roaming in this market.

124. In the Application, Sprint and Nextel address the impact of the merger on the availability of automatic roaming services. Sprint and Nextel state that the merged entity “do[es] not expect to terminate any existing roaming agreements as a result of the merger.”²⁵² Sprint currently has over 90 domestic, and over 40 international, roaming agreements.²⁵³ Although it expects that, “as a result of the expanded geographic coverage of its CDMA network, the merged company will avoid some roaming charges that Sprint currently incurs,” Sprint states that “there is no list of markets for which the merged firm would not need roaming agreements” after the merger.²⁵⁴ In addition, some of Sprint’s roaming partners filed comments in support of the merger. They claim that their roaming relationship with Sprint has brought access to technology and resources, which helps to provide complete wireless coverage to rural areas.²⁵⁵

²⁵¹ Letter from Michael K. Powell, Chairman, FCC to Michael D. Gallagher, Assistant Secretary for Communications and Information, U.S. Department of Commerce, dated December 29, 2004.

²⁵² [REDACTED]

²⁵³ Sprint and Nextel Joint Opposition to Petition to Deny and Reply to Comments at 9.

²⁵⁴ *Id.*

²⁵⁵ They also contend that the proposed merger will benefit industry and customers through greater technological innovation. Nex-Tech Wireless Comments at 1, 2; Pioneer Comments at 1; United Wireless Corporation Comments at 1.

125. A number of other commenters and one petitioner have either requested that the Commission impose a condition requiring the merged entity to enter into reasonable, non-discriminatory, roaming agreements,²⁵⁶ or declare a national policy requiring large nationwide carriers to enter into reasonable, reciprocal, roaming agreements.²⁵⁷ For instance, one of Nextel's domestic roaming partners, SouthernLINC Wireless, contends that a condition requiring the merged entity to enter into roaming agreements is necessary because it has encountered great difficulty in trying to negotiate a reasonable roaming agreement with Nextel or its affiliate, Nextel Partners. 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 the rates other carriers pay; and Nextel Partners has refused to enter into roaming agreements with SouthernLINC Wireless.²⁵⁸ Sprint and Nextel believe that these requests should be addressed in a rulemaking proceeding on roaming rather than in this license transfer proceeding.²⁵⁹

126. We find that the roaming issues raised by these parties do not raise substantial and material questions of fact regarding the proposed merger before us. Although this merger would reduce the number of nationwide carriers, it is not likely to result in anticompetitive effects regarding roaming services because it will not reduce the number of iDEN or CDMA nationwide roaming partners for smaller, rural, and/or regional providers. Since the bargaining positions of smaller providers who use either iDEN or CDMA networks and who want to enter into roaming agreements with Nextel or Sprint, would be the same post-merger as they were before the merger, the reduction in the number of nationwide carriers does not create merger-specific competitive harm in the market for roaming services.

²⁵⁶ New Jersey Division of the Ratepayer Advocate filed a pleading entitled "Petition to Deny" in which it argues that the proposed merger poses significant adverse effects upon all wireless services customers. Ratepayer Advocate Petition to Deny at 2. In its Reply to Sprint and Nextel's Joint Opposition to the Petitions to Deny, New Jersey Division of the Ratepayer Advocate further contends that the merged entity will have the market power to refuse to enter into roaming agreements with small carriers. Ratepayer Advocate Reply at 4. Therefore, it urges the Commission to condition approval of the merger on Sprint and Nextel fully explaining their plans for developing roaming agreements with fair and reasonable rates and conditions. *Id.* at 4. As an initial matter, New Jersey Division of the Ratepayer Advocate has not complied with the statutory requirements for the filing of a petition to deny because it has not attached an affidavit as required under Section 309(d) of the Communications Act. *See* 47 U.S.C. 309(d)(1). In any event, to the extent the New Jersey Division of the Ratepayer Advocate's filing can be considered a petition to deny, we reject it as not raising substantial and material questions of fact for the reasons set forth in this section on roaming. NY3G Partnership, an MMDS licensee, filed a petition to deny in which it contends that, if the Commission otherwise finds the proposed merger in the public interest, then the Commission should impose conditions on the merged entity that would require the merged entity to engage in good faith negotiations towards entering into automatic roaming agreements with other BRS/EBS providers. NY3G Partnership Comments at 3. We address NY3G's petition *infra* Section V.B.1.a.

²⁵⁷ USCC and Rural Cellular Association ("RCA") urge the Commission to use this merger review proceeding to adopt policies requiring large nationwide carriers to enter into reasonable, reciprocal, roaming agreements with small, mid-size, regional carriers. USCC Comments at 1, 2, 5; RCA Comments at 2-5. They also argue that a policy is needed to support interoperability between the networks of national and regional carriers for data-based services including Push-To-Talk. USCC Comments at 11-12.

²⁵⁸ SouthernLINC Wireless Reply Comments at 1, 6, 8.

²⁵⁹ Joint Opposition at 11-12.

127. We are concerned, however, about the general difficulties that smaller, rural, wireless providers are facing in trying to negotiate automatic roaming agreements with nationwide carriers.²⁶⁰ RCA and USCC, for example, contend that rural customers are at risk of not having the technical ability to roam on the merged entity's network.²⁶¹ Our manual roaming rule requires other carriers to complete calls initiated by Sprint Nextel's customers where Sprint Nextel cannot because it has neither its own signal nor an automatic roaming agreement.²⁶² To address the potential harm identified by RCA and USCC and to ensure compliance with the manual roaming requirement, we adopt as a condition to our grant in this Order a reciprocal duty, *i.e.*, that Sprint Nextel may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber. We also note that if a roaming partner believes that Sprint Nextel is charging unreasonable roaming rates, it can always file a complaint with the Commission under section 208 of the Communications Act.²⁶³

128. We recognize that the manual roaming requirement and the ability to file a section 208 complaint may not fully address the concerns raised by the commenters. However, 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. As we stated in the *ALLTEL-Western Wireless Order*, the Commission plans to initiate a proceeding to examine whether our rules regarding the roaming requirements applicable to CMRS providers should be modified to take into account current market conditions and developments in technology. This proceeding will afford interested parties an opportunity to comment on a variety of roaming issues, including manual and automatic roaming, technical considerations, and small and rural carrier roaming issues.²⁶⁴

7. Potential Public Interest Benefits

129. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products.”²⁶⁵ Under Commission precedent, however, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.²⁶⁶ In addition to assessing the potential competitive harms of the

²⁶⁰ USCC Comments at 1, 2, 5; RCA Comments at 2-5.

²⁶¹ RCA Comments at 3-4; USCC Comments at 2.

²⁶² See 47 C.F.R. § 20.12; see also *ALLTEL-Western Wireless Order*, 2005 WL 1693557 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁶³ 47 U.S.C. § 208. See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁶⁴ See *ALLTEL-Western Wireless Order*, 2005 WL 1693557, ¶¶ 108-109.

²⁶⁵ See *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 188; Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control, 12 FCC Rcd 19885, 20063 ¶ 158 (1997) (“*Bell Atlantic-NYNEX Order*”); see also *DOJ/FTC Merger Guidelines* § 4.

²⁶⁶ See, e.g., *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 188; see also *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20063 ¶ 157; Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For (continued....)

proposed transaction, we also consider whether the combination of these companies' wireless operations is likely to generate verifiable, merger-specific, public interest benefits.²⁶⁷ We examine whether operation of the combined entity could yield consumer benefits unattainable absent a merger. For the reasons discussed below, we have determined that the Applicants' proposed transaction will likely result in some merger-specific public interest benefits. We reach this result knowing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to quantify the magnitude of these benefits or the time horizon in which these benefits will be realized.²⁶⁸

130. The Commission applies several criteria to decide whether a purported merger benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger, but unlikely to be realized by other means that entail fewer anticompetitive effects.”²⁶⁹ Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the Commission can verify the likelihood and magnitude of the claimed benefit.²⁷⁰ In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”²⁷¹ Furthermore, speculative benefits that cannot be verified will be discounted or dismissed. Thus, as the Commission explained in the *EchoStar-DirecTV Order*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions

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Consent to Transfer of Control, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 256 (1999) (“*SBC-Ameritech Order*”).

²⁶⁷ *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14130 ¶ 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14825 ¶ 255; *WorldCom/MCI Order*, 13 FCC Rcd at 18134-35 ¶ 194.

²⁶⁸ The Applicants claim that the proposed merger will result in total net synergies of approximately \$12.1 billion on an after tax, net present value basis. Application, Public Interest Statement at 32. [REDACTED]

²⁶⁹ *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 189; see also *Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”); *SBC-Ameritech Order*, 14 FCC Rcd at 14825 ¶ 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger”); *Comcast-AT&T Order*, 17 FCC Rcd. 23246, 23313 ¶ 173 (Commission considers whether benefits are “merger-specific”). *Cf. DOJ/FTC Merger Guidelines* § 4.

²⁷⁰ *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 190; see also *Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 157 (“These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies ... are sufficiently likely and verifiable”); *AT&T-Comcast Order*, 17 FCC Rcd at 23313 ¶ 173 (Commission considers whether benefits are “verifiable”); *SBC-Ameritech Order*, 14 FCC Rcd at 14825 ¶ 255; *DOJ/FTC Merger Guidelines* § 4 (“[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm's ability to compete”).

²⁷¹ *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 190.

about events that are expected to occur closer to the present.”²⁷² Third, the Commission also stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”²⁷³ In general, reductions in marginal costs are more likely than reductions in fixed costs to result in lower prices for consumers.²⁷⁴

131. Based on these factors, we find that this transaction could lead to efficiencies that result in reduced prices for consumers and/or increased coverage, improved service quality, and more extensive advanced service offerings. These merger-specific cost savings and cost avoidance may be achieved in a variety of ways, including elimination of redundant cell sites,²⁷⁵ reduced reliance on outside networks for backhaul operations,²⁷⁶ and avoidance of cost duplication in the development and deployment of new technologies.²⁷⁷ We also find that the larger size of the Sprint Nextel entity will likely create opportunities to obtain quantity discounts from network equipment and handset suppliers.²⁷⁸ Additional savings may be realized through an efficient combination of the development and operation of the billing, sales, and marketing functions of each of the separate entities after the merger.²⁷⁹ Finally, we find that the proposed acquisition may result in greater intermodal competition between mobile wireless and wireline mass market services.²⁸⁰

a. Service Quality and Coverage

132. We find that current and future Sprint and Nextel subscribers will likely receive improved service quality as a result of the coordinated improvements to the CDMA and iDEN networks.²⁸¹ Applicants plan to consolidate cell sites, add CDMA infrastructure to existing iDEN cell sites, and increase the number of iDEN cell sites.²⁸² This will likely reduce dropped and blocked calls for current Sprint and Nextel customers.²⁸³

133. The extent of potential service enhancements will depend on the cell site locations, their proximity to each other, as well as the physical and commercial attributes of the

²⁷² *Id.*

²⁷³ *Id.*; see also *DOJ/FTC Merger Guidelines* § 4.

²⁷⁴ See *EchoStar-DirecTV Order*, 17 FCC Rcd. at 20630 ¶ 191; see also *DOJ/FTC Merger Guidelines* § 4.

²⁷⁵ Application, Public Interest Statement at 7.

²⁷⁶ *Id.* at 7, 39.

²⁷⁷ *Id.* at 34.

²⁷⁸ *Id.* at 7.

²⁷⁹ *Id.* at 35.

²⁸⁰ *Id.* at 28-31.

²⁸¹ Nextel reports that more than one-third of the former customers that it surveyed indicated that they dropped Nextel service because of network performance issues, including dropped calls, coverage holes, in-building coverage, system outages, and lack of expanded coverage. Similarly, Sprint reports that approximately 36 percent of the former customers it surveyed cited network performance as a main reason for seeking an alternative service provider. CRA Analysis at 11 ¶ 27.

²⁸² Public Interest Statement at 6 and 37. Valente and West Decl. at ¶¶ 34-36, 52, and 53. [REDACTED]

²⁸³ *Id.*

cell sites. The Applicants will have access to over 43,000 cell sites nationwide operating in the 800 MHz, 900 MHz, and 1.9 GHz bands located in over 350 MSAs.²⁸⁴ Furthermore, Sprint estimates that it will build [REDACTED] new CDMA cell sites and incorporate [REDACTED] CDMA cell sites into Nextel iDEN cell sites by the end of 2008.²⁸⁵ Of these [REDACTED] cell sites, Sprint estimates that it will consolidate [REDACTED] current CDMA cell sites with Nextel sites and incorporate [REDACTED] new cell sites with existing or newly built iDEN cell sites.²⁸⁶ We find that successful implementation of these plans should result in improved service for existing Sprint and Nextel customers. Subscribers to both networks should benefit as cell site optimization leads to fewer coverage holes, improved building penetration, better audio quality and fewer dropped calls.²⁸⁷

b. Next Generation Service

134. We also find that the Applicants' plan for the merged entity to implement its 3G technology, known as 1xEV-DO, over much of its current network, and ultimately upgrade the entire combined Sprint Nextel network to 1xEV-DO Revision A, should create merger-specific benefits. Prior to the merger, Nextel had not selected a technology to bring next generation services to its subscribers. As a consequence of the merger, Nextel subscribers may be able to benefit from the next generation services that Sprint asserts that it will provide.²⁸⁸ By the end of 2006, Sprint claims that the technology will be available to the vast majority of its licensed markets.²⁸⁹ The Applicants assert that post-merger they will follow this deployment with the 1xEV-DO Revision A upgrade throughout their network.²⁹⁰ By early 2008, Sprint plans to complete the deployment of 1xEV-DO Revision A, which may enable high performance push-to-talk capabilities and peak downlink data rates of 3.1 Mbps with an anticipated average rate of 400 to 600 kbps.²⁹¹ Expected user average uplink data rates range from 300 to 500 kbps.²⁹²

135. Sprint Nextel will initially operate three radio access networks: iDEN and two CDMA variations – 1xRTT and 1xEV-DO.²⁹³ In order to provide access to broader services, the Applicants represent that they will investigate a multi-mode, multi-band handset that will support

²⁸⁴ Valente and West Decl. at ¶¶ 35-36. Of the 43,000 cell sites, Sprint now holds 24,000 and Nextel holds 19,700. *Id.*

²⁸⁵ [REDACTED]

²⁸⁶ [REDACTED]

²⁸⁷ Valente and West Decl. at ¶ 52.

²⁸⁸ Application, Public Interest Statement at 26-27. Specifically, in June 2004, Sprint announced adoption of CDMA 1xEV-DO as a 3G platform to enhance PCS Vision networks' data rate and capacity. Sprint represents that it will make the service available to 129 million people in 39 major markets this year. *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.* Sprint also states that the 1x EV-DO Revision A wireless modem card provides (downlink) data rates of 300 to 500 kbps with peak data bursts of up to 2450 kbps. In contrast, the 1xRTT network provides an average data rate of 50 to 70 kbps with peak bursts of 144 kbps. See Valente and West Decl. Attachment 1 at ¶ 9.

²⁹³ Valente and West Decl. at ¶¶ 8, 33.

1xRTT voice and data, 1xEV-DO data, and iDEN.²⁹⁴ In addition, the parties plan to deploy gateways to achieve interoperability between the CDMA and the iDEN networks.²⁹⁵

136. If the Applicants implement the above measures and are able to overcome any integration challenges,²⁹⁶ iDEN subscribers should benefit from faster data rates and interoperability between CDMA and iDEN push-to-talk capabilities. Sprint subscribers can expect to benefit from faster access to the enhanced capabilities of the 1xEV-DO Revision A network, including a significantly improved push-to-talk feature. Furthermore, should a multi-mode, multi-band handset become available, Sprint Nextel subscribers may have access to a broader array of network resources.

c. Economies of Scale and Operating Synergies

137. It is also likely that the transaction will result in scale economies and operating synergies that would not otherwise be available to the Applicants if each entity continued separate operations. Although it is difficult to verify the Applicants' dollar value estimates, there is ample evidence in the public domain that enables us to set reasonable bounds on the capital investment required for a wireless carrier to deploy a next generation network, a capital expense that Nextel will be able to avoid. In addition, we believe that it is likely that the Applicants will likely reap significant savings by merging their billing, customer care, sales, and marketing systems.

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

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

²⁹⁴ Valente and West Decl. at ¶ 45. Nextel has begun a dual-mode, iDEN and CDMA, phone development effort. **[REDACTED]**

²⁹⁵ Application, Public Interest Statement at 25. Nextel states that it has developed an IP gateway that will facilitate interoperability between iDEN and other PTT technologies. *See* Valente and West Decl. Attachment 2 at ¶ 11.

²⁹⁶ Nextel expects that the greatest challenge will be to support dual-mode handsets due to implementation differences between GSM and CDMA networks. **[REDACTED]**

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

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

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

³⁰⁰ *Id.*

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

d. Intermodal Competition

141. We conclude that the proposed merger is likely to result in benefits to the nascent competition between wireless and wireline services for local telephony services provided to mass market consumers.³⁰⁷ As the Commission has noted in numerous proceedings, a limited but growing proportion of mass market consumers use wireless networks as their primary connection to the public switched telephone network or have chosen to “cut the cord” and use wireless services in lieu of wireline services for all of their local exchange services.³⁰⁸ The Commission has consistently sought to create the regulatory conditions for robust intermodal competition, and we remain strongly committed to achieving that important policy goal.³⁰⁹

142. We find that the proposed acquisition is likely to result in greater intermodal competition based on the fact that the Applicants are independent wireless carriers.³¹⁰ First, we agree with the Applicants that the lack of a wireline affiliation in the instant application is relevant to our determination of the likelihood of benefits to intermodal competition between

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

³⁰² Application, Public Interest Statement at 36.

³⁰³ *Id.* at 34-35.

³⁰⁴ *Id.* at 35.

³⁰⁵ *Id.* at 34-35.

³⁰⁶ *Id.* at 36.

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

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

³⁰⁹ *Id.* at 21619 ¶ 250.

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

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

143. Second, we conclude that intermodal competition may benefit from the merger efficiencies discussed above.³¹⁶ The Applicants have identified savings from lower development and deployment costs, information technology, billing, sales, and marketing expenses, which should permit the firm to charge lower prices and provide better services.³¹⁷ Other sources of post-acquisition cost-savings include improved network coverage and utilization of Sprint's

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

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

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

³¹⁴ [REDACTED]

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

³¹⁶ *See supra* Section V.A.7.(iii).

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

metropolitan area networks for Nextel's backhaul needs.³¹⁸ To the extent that these and other possible efficiencies result in lower prices and/or quality of service improvements, intermodal competition is likely to increase as these benefits increase the attractiveness of mobile wireless service relative to wireline service.

e. Public Safety

144. We do not find that the merger will benefit public safety. The record does not clearly demonstrate significant merger-specific benefits in the near term with respect to E911 deployment,³¹⁹ CALEA implementation,³²⁰ 800 MHz rebanding,³²¹ or homeland security.³²² We are particularly concerned about the merged entity's progress toward E911 compliance. The applicants are obligated by FCC rule to ensure that 95 percent of handsets are Phase II E911 compliant by December 31, 2005. Nextel has admitted that it "anticipates that Sprint Nextel will likely not achieve the Commission's 95 percent A-GPS handset penetration requirement until

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

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

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

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

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

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

B. 2.5 GHz Band

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

146. In 2003, the Commission, recognizing the lack of vigorous development and use of spectrum in this band, initiated a proceeding to realign the 2.5 GHz band plan³²⁵ and adopt more flexible technical rules to permit the provision of new and innovative wireless services.³²⁶ In July 2004,³²⁷ the Commission transformed the rules and policies governing the licensing of the Educational Broadband Service (EBS), formerly known as the Instructional Television Fixed Service (ITFS), and the Broadband Radio Service (BRS), formerly known as the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS), in the 2.5 GHz band. Specifically, the Commission realigned the interleaved band plan into three spectrum blocks,³²⁸ and established a transition plan for relocating EBS and BRS licensees from their current channel locations to their new spectrum blocks.³²⁹ Under the new flexible rules, it

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

³²⁴ 47 C.F.R. 20.18.

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

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

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

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

³²⁹ *Id.* at 14194-14208 ¶¶ 68-103. Under the timeline adopted by the Commission, the transition should be completed by October 2009, although it may be longer in some cases if dispute resolution procedures are used. Also, some areas of the country will not be transitioned according to the transition rules adopted by the Commission (continued....)

has not yet become clear exactly what services and markets will develop following completion of the transition plan.

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

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

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

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

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

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

³³¹ Application, Public Interest Statement, at 47.

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

³³³ Rowley/Finch Decl. at 3.

³³⁴ Application, Public Interest Statement at 52.

³³⁵ CFA/CU Reply at 6. We are not convinced that all of the Petitioners have adequately demonstrated that they have standing. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21522 n. 196. For example, the declaration submitted by CFA/CU in support of its standing is deficient because the declarant failed to make any specific claims regarding his current ownership or use of a wireless phone that would demonstrate that he would be directly affected by the order. See CFA/CU Reply at 8, Declaration of Mark Cooper; *Compare Consumer Federation of America v. FCC*, 348 F.3d 1009, 1012 (D.C. Cir. 2003). However, we need not decide the standing issue because we do not, in (continued....)

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

151. Under this approach, considering the record before us, we conclude below that the merger of the Applicants' holdings in the 2.5 GHz band will not likely result in public interest harms and that the alleged benefits are insufficiently concrete. We find the harms of undue concentration alleged by Petitioners unlikely and/or not merger-specific for a number of reasons. The holdings of the applicants do not generally overlap, and the merger would thus not increase concentration in most local markets. Substantial amounts of 2.5 GHz spectrum remain for other competitors. Sprint Nextel will have strong, nationwide competitors with sufficient spectrum outside the 2.5 GHz band and powerful incentives to compete in all the potentially relevant product markets. The 2.5 GHz band does not appear to be a uniquely suitable input for any specific market. The degree and type of concentration resulting here is consistent with the

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any case, find petitioners' arguments for denial of the applications persuasive. In addition, even absent standing, we still have discretion to consider their pleadings as informal objections. See *Nextel License Holdings 4, Inc.*, 17 FCC Rcd 7028, 7033 ¶ 16 (2002). We also note Applicants' argument that petitioners did not include proof of service. Joint Opposition to Petitions at 6, n.14.

³³⁶ For a detailed discussion of the history of the 2500-2690 MHz band, see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; *Notice of Proposed Rulemaking*, 19 FCC Rcd 6722, 6726-44 (2003) (*BRS/EBS NPRM*).

³³⁷ See *supra* Section V.A.

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

policies reflected in the rules governing the auctioning and transfer of this particular spectrum. The onset of competitors' needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for Advanced Wireless Services (AWS). Given these factors, a nationwide footprint in the 2.5 GHz band does not bestow a unique or excessive competitive advantage. Furthermore, Applicants' commitment to develop the spectrum, which we make a condition to our approval of this merger, gives additional comfort against any potential for relaxed incentive. We therefore conclude that the petitions to deny the transfer application based on effects on BRS and EBS spectrum do not raise substantial and material questions of fact.³³⁹ Finally, we further conclude that, at this time, claims that the merger will result in specific public interest benefits, while promising and encouraging, remain too speculative to deserve significant weight.

1. Potential Public Interest Harm

a. Mobile Data Services Market

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

153. Several petitioners and commenters raise concerns about the amount of 2.5GHz spectrum Sprint Nextel would control, both in local markets and in the aggregate, and its unique position as a provider with a national footprint in this band.³⁴¹ Alleged potential harms include: spectrum warehousing; delays in service launch; and a lack of service and competitive prices.³⁴²

³³⁹ It is not entirely clear that NY3G Partnership has filed a petition to deny. See NY3G Petition to Deny. As an initial matter, NY3G Partnership has not complied with the statutory requirements for the filing of a petition to deny because it has not attached an affidavit as required under Section 309(d) of the Communications Act. See 47 U.S.C. 309(d). Also, NY3G Partnership argues that, if the Commission otherwise finds the proposed merger is in the public interest, the Commission should impose roaming conditions. NY3G Petition to Deny at 4. It does not appear to argue that the proposed merger should be denied because it will lead to anticompetitive effects with respect to roaming. *Id.* at 4-8. In any event, to the extent NY3G Partnership's filing can be considered a petition to deny, we reject it as not raising substantial and material questions of fact for the reasons set forth in this Section.

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

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

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

Petitioners claim that the problems associated with the size of Sprint Nextel's BRS holdings are exacerbated by a lack of available spectrum suited to compete with the merged entity's BRS holdings.³⁴³ Petitioners assert that these circumstances would result in few firms being able to prevent Applicants from exercising market power, creating a high risk of unilateral effects.³⁴⁴ Based on their position that Sprint Nextel would hold too much spectrum in given markets and that the formation of a national BRS provider would give Sprint Nextel unchecked market power,³⁴⁵ petitioners contend that Commission consent to the merger should be conditioned by imposing various measures – including spectrum divestiture,³⁴⁶ spectrum caps,³⁴⁷ specific roaming requirements,³⁴⁸ porting requirements for local markets,³⁴⁹ and other requirements – on the merged entity.³⁵⁰ For a combination of reinforcing reasons we find the alleged potential harms unlikely and the proposed remedies unnecessary.

154. According to the Applicants, the majority of the 202 megahertz³⁵¹ of BRS/EBS spectrum in the 2.5 GHz band will remain available to rival competitors post-merger.³⁵² Further, Applicants argue that competitors will have access to nearly 300 megahertz of spectrum in other

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

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

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

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

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

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

³⁴⁹ NY3G Pet. at 6.

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

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

³⁵² Joint Opposition to Petitions at 25.

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

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

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

157. Furthermore, we are not persuaded by petitioners' arguments that the 2.5 GHz band is intrinsically superior to other spectrum for the provision of wireless services.³⁵⁹ As Applicants acknowledge, while there is great promise for the development of broadband services in the 2.5 GHz band, and indeed, high-speed wireless Internet access services have already been

³⁵³ *Id.* at 23.

³⁵⁴ *Id.* at 23-4.

³⁵⁵ *Id.* at 24.

³⁵⁶ NY3G Reply 8-10.

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

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

³⁵⁹ *See* NY3G Reply at 6-7.

deployed therein notwithstanding the current interleaved band plan,³⁶⁰ each spectrum band has its own advantages and disadvantages for the provision of services.³⁶¹ Finally, while we, at this time, are not certain as to the exact timing of availability of alternative spectrum, we anticipate that as the transition period for BRS/EBS expires, other “WIMS-capable” spectrum should become accessible to competitors. Therefore, we find that if the 2.5 GHz band is used for the provision of mobile data service, it will be one of many existing and potential inputs into the mobile data services market. Accordingly, we conclude that the proposed merger will not harm competition in the wireless interconnected mobile data services market.

158. We also conclude that the merger will not cause any competitive harm in the BRS band in any specific local market. Because the 2.5 GHz band holdings of the Applicants do not significantly overlap, the merger itself will generally not increase concentration in local markets. Applicants have provided information concerning the areas and populations they currently cover in terms of MHz-Pops³⁶² both for spectrum licensed to the Applicants and for spectrum that they lease from other entities.³⁶³ In response to a request for further information from Commission staff, Applicants also provided their estimate of the average bandwidth available to them in each BTA, both before and after the merger.³⁶⁴ The vast majority of BRS holdings of Sprint and Nextel are complementary, *i.e.* they generally do not overlap.³⁶⁵ Thus, for most of the markets where the merged entity will hold BRS licenses, the merger itself will have little impact. Notably, in only seventeen BTAs will the merger result in a ten percentage point or more increase in MHz-Pops covered by the merged company (whether by license or lease) over and above the MHz-Pops currently covered by the company with the larger spectrum holding in the market.³⁶⁶ In only four of those seventeen BTAs (Lewiston-Moscow, Idaho, Bellingham, Washington, Oklahoma City, Oklahoma, and Danville, Illinois) will the merger result in an increase of over twenty percentage points in licensed and leased MHz-Pops.³⁶⁷ We note that

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

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

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

³⁶³ Application, Attach. 1 to Attach. E.

³⁶⁴ See Nextel Response to Information Request No. 25.

³⁶⁵ Application Rowley Finch Decl. at 5-7.

³⁶⁶ Application, Attach. 1 to Attach E.

³⁶⁷ *Id.* Twenty-eight percentage points is the highest incremental MHz-Pops increase for any market. We are not persuaded by assertions set forth by petitioners that the Applicants have not disclosed their lease holdings because Sprint Nextel attribute all licenses in MHz-Pops analysis. CTCN Reply at 16. We are also are not persuaded by (continued....)

these four markets are relatively small in population size and that the combined entity would not hold forty percent of the combined MHz-Pops licensed in these four markets.³⁶⁸ The merged entity would hold more than fifty percent of the leased holdings in only Bellingham (fifty-eight percent).³⁶⁹ Therefore, in these markets, there will remain substantial amounts of spectrum that will not be under the control of Applicants. Furthermore, if examined in terms of average bandwidth available to the Applicants (whether licensed or leased), the merger will result in an increase in only 65 of 493 BTAs, and in the majority of those BTAs, the increase would be by less than one megahertz.³⁷⁰ Accordingly, we conclude that requiring divestiture for spectrum in the 2.5 GHz band is not in the public interest.

159. Furthermore, we reject the argument that there will be competitive harm from the formation of one provider with a national footprint, as opposed to two providers with regional footprints.³⁷¹ Given the significant size of Sprint's and Nextel's respective current regional footprints in this band pre-merger, the petitioners have failed to identify any specific competitive harm that could be avoided by rejecting this merger and retaining these two large regional providers as separate entities. Further, based on the history of spectrum auctions and licensing in the 2.5 GHz band, we are not persuaded that rejecting the merger would ultimately result in the emergence of two national providers or two large providers that would more willingly negotiate with smaller providers than the single merged entity.³⁷² Even if petitioners had identified a competitive harm, it is not clear that not allowing the companies to merge would avoid that potential competitive harm.

160. Based on the record before us,³⁷³ and in light of our conclusion that this merger will not result in competitive harm in the 2.5 GHz band, we are not persuaded that spectrum divestitures are warranted regarding the Applicants' spectrum holdings in the band. Furthermore, we emphasize that divesting licensees of 2.5 GHz band spectrum would be inconsistent with the Commission's long-standing regulatory policies regarding the 2.5 GHz band, including the encouragement of consolidation of spectrum in this band, due to its historical underutilization. In fact, in establishing the procedures for the MDS auction, the Commission placed no restriction on the number of BTA service areas for which any entity could apply or on

(Continued from previous page) _____
petitioner claims that the Applicants' data is unreliable based on the inclusion of EBS and white space. We agree with Applicants that the inclusion or exclusion of this spectrum does not have a significant effect on the overall analysis of the merged entity holding in the 2.5 GHz band. Joint Opposition to Petitions at 33-34, n.90. Unlicensed white space may become available in the future and EBS licensees routinely lease excess capacity. *See BRS/EBS R&O*, 19 FCC Rcd at 14226 ¶¶ 160-162.

³⁶⁸ Application Attach. 1 to Attach. E.

³⁶⁹ *Id.*

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

³⁷¹ CTCNet Reply at 6-8.

³⁷² CTCNet Supplement to Reply at 4.

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

the number of BTA authorizations that could be awarded to one entity.³⁷⁴ To further encourage and facilitate the accumulation of a full complement of channels necessary for viable systems, the Commission also granted BTA auction winners a right of first refusal with regard to the leasing of EBS spectrum within their BTA. Specifically, the BTA holder was afforded the right to match all final offers of any proposed lessee for EBS spectrum in their BTA.³⁷⁵

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

162. Additionally, we believe that conditions proposed by petitioners, such as spectrum divestitures, spectrum caps, specific roaming requirements, and porting requirements would be premature, given the nascency of broadband uses and the on-going transition process in the 2.5 GHz band.³⁷⁸ Notably, in the BRS/EBS proceeding, the Commission specifically raised the issue of whether restrictions were necessary for the 2.5 GHz band³⁷⁹ and determined, after a notice and comment period, that such limits were not in the public interest.³⁸⁰ Significantly, none of the

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

³⁷⁵ *Id.* at 9621 ¶ 41.

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

³⁷⁷ *Id.* at 14222-223 ¶ 52.

³⁷⁸ CTCNet argues that the Applicants' past record of usage of BRS spectrum is inadequate because only 28% of Nextel's commercial BRS authorizations are constructed. CTCNet Pet. at 20. Petitioner's argument only goes to further emphasize our point that, based on the widespread underutilization of spectrum in the 2.5 GHz band, significant steps are needed to encourage deployment of BRS, including ensuring that operators are able to provide service with as few regulatory encumbrances as possible. Further, we disagree with NY3G which asserts that the Commission has regulated nascent services. NY3G Reply at 11-12. In contrast, the Commission has demonstrated a preference to allow broadband markets to develop with fewer levels of regulatory burden than traditional voice service. See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Universal Service Obligations of Broadband Providers, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, *Notice of Proposed Rulemaking*, 16 FCC Rcd 22745, 22747 ¶ 4 (2001). Regardless, Commission precedent in regulating the 2.5 GHz band clearly guides use to permit a primary licensee in a given BTA.

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

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

petitioners who recommend conditions in this proceeding submitted such proposals in the rulemaking proceeding, which would have been the appropriate vehicle to thoroughly consider such requests.³⁸¹ While Petitioners counter that they had no notice in the BRS/EBS proceeding that one dominant carrier would emerge, both Sprint and Nextel held considerable regional footprints prior to the issuance of the *BRS/EBS R&O*.³⁸² Moreover, we have independently analyzed the record and concluded that competitive harm is unlikely.

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

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

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

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

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

³⁸² CTCNet Reply at 9.

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

³⁸⁴ See *BRS/EBS R&O & FNPRM*.

b. Fixed Broadband Services Market

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

2. Potential Public Interest Benefits

168. Because we conclude that any public benefits of this merger on the commercial development of the 2.5 GHz band are too speculative to assess at this time, we do not factor into our analysis any public interest benefits with regard to the 2.5 GHz band. We are unable on this record to give substantial weight to the Applicants’ assertion that the merger will produce significant efficiencies in improved development of services in the 2.5 GHz band.³⁸⁸ Applicants contend that the merger will accelerate the deployment of WIMS in this band.³⁸⁹ Specifically,

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

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

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

³⁸⁸ Application, Public Interest Statement at 32.

³⁸⁹ *Id.* at 42.

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

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

³⁹⁰ *Id.*

³⁹¹ Rowley-Finch Decl. at 8.

³⁹² *Id.*

³⁹³ Application, Public Interest Statement at 43.

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

³⁹⁵ Rowley-Finch Decl. at 3.

³⁹⁶ Rowley-Finch Decl. at 13.

³⁹⁷ CTC-Net Further Comments at 5.

contingent to receive significant weight in our analysis. Therefore, we do not factor into our analysis public interest benefits with regard to the 2.5 GHz band.

C. Other Issues

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

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

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

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

173. A number of SMR licensees filed petitions for reconsideration of the *800 MHz Order* and the *Supplemental Order*. The SAFE Coalition, Coastal SMR, Scott MacIntyre, and Preferred Communications claimed that the Commission improperly: (a) eliminated the ability of incumbent SMR high-site licensees to convert their systems to ESMR architecture; and (b)

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

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

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

⁴⁰¹ *Id.* at 15045-15079 ¶¶ 142-207.

⁴⁰² *Id.* at 15046 ¶¶ 144-145.

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

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

denied licensees the right to relocate site-based licenses to the ESMR band.⁴⁰⁵ Coastal SMR Network, Duncan, and Preferred also contended that the Commission abused its discretion by authorizing Nextel to operate spectrum in the 1.9 GHz band,⁴⁰⁶ arguing that under Commission precedent, the Commission could only assign the 1.9 GHz spectrum outside the auction process if the Commission made the spectrum available to all EA licensees.⁴⁰⁷

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

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

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

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

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

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

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

⁴¹⁰ *Id.* at 5-7.

⁴¹¹ *Id.* at 5-6.

⁴¹² *Id.* at 5-9.

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

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

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

177. We deny these petitions. The harms SAFE Coalition and Preferred Communications allege were caused by the Commission’s *800 MHz Order* and *Supplemental Order* predate Sprint and Nextel’s license transfer application. The Commission will address the arguments about these alleged harms in an order resolving the petitions for reconsideration of the *800 MHz Order* and *Supplemental Order*.⁴¹⁸

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

⁴¹⁵ See Duncan Petition to Deny at 3.

⁴¹⁶ See *id.* at 4.

⁴¹⁷ See *id.* at 5, 7-9.

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

⁴¹⁹ Duncan Petition to Deny at 3.

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

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

⁴²² See *supra* Section V.A.7.

the merger is approved, they intend to move expeditiously to implement the Commission's reconfiguration plan.⁴²³

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

2. Sprint Contractual Dispute With US Unwired

180. Sprint's wireless footprint has been expanded through relationships with independent PCS "affiliates," typically in smaller markets.⁴²⁵ One of these affiliates, US Unwired,⁴²⁶ claims that in exchange for its agreement (made through subsidiaries) to construct, manage, and operate portions of the Sprint PCS wireless network, US Unwired was given exclusive rights to operate the Sprint PCS wireless network in certain geographic areas. US Unwired alleges that approval of the proposed merger would violate its exclusive rights and that the public interest would be disserved because Sprint would be forced to discontinue service to those customers after the merger is completed. In reply, Sprint claims that US Unwired's request constitutes a private contractual matter and should be denied.⁴²⁷

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

⁴²³ See Application, Public Interest Statement at 63.

⁴²⁴ SAFE Coalition Petition to Deny at 6.

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

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

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

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

3. CWA's Petition to Impose Conditions

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

183. Even though our benefits analysis in this transaction is not dependent on the announced future spin-off of Sprint's Local Division, we note that Sprint and Nextel have submitted a letter in this proceeding specifically addressing CWA's comments.⁴³¹ Gary D. Forsee, Sprint's Chairman and CEO, and Timothy M. Donahue, Nextel's President and CEO, submitted a letter to the Commission on August 2, 2005, stating that the new local company, LTD Holding Company, "will receive an equitable debt and asset allocation at the time of its proposed spin-off so that the company will be a financially secure, Fortune 500 company."⁴³² They state that "[i]ts stock is expected to be traded on the New York Stock Exchange; and it anticipates having a level of equity, debt and other financial characteristics consistent with those of companies that have been rated 'investment grade' by major ratings agencies."⁴³³ Furthermore, Mr. Forsee and Mr. Donahue state that, as part of the state commission approval process for this spin-off and resulting change of control of its local telephone operations, Sprint Nextel "will demonstrate that the New Local Company will possess the requisite financial strength, in addition to managerial and technical capability, to fully perform its public service obligations."⁴³⁴ We find that these statements represent commitments by Sprint Nextel that the new local wireline company, LTD Holding Company, will receive an equitable debt and asset allocation at the time of its proposed spin-off so that the company will be a financially secure, Fortune 500 company, and that Sprint Nextel will demonstrate that the new local company will possess the requisite financial strength, in addition to managerial and technical capability, to fully perform its public service obligations. In addition, these statements are presumably made in accordance with the Commission's requirements of candor and truthfulness,⁴³⁵ and, for this reason, we award them substantial weight.

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

⁴³⁰ CWA Petition at 6-9.

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

⁴³² *Id.* at 1.

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

⁴³⁴ *Id.* at 2 n.2.

⁴³⁵ *See* 47 CFR §1.17.

VI. CONCLUSION

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

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

VII. ORDERING CLAUSES

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

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

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

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

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

191. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from Nextel to Sprint filed by New Jersey Division of the Ratepayer Advocate; Richard W. Duncan d/b/a Anderson

Communications; Consumer Federation of America and Consumers Union; Safety and Frequency Equity Competition Coalition; Community Technology Centers' Network; Preferred Communications Systems Inc.; and NY3G Partnership ARE DENIED for the reasons stated herein.

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**APPENDIX A
LIST OF COMMENTERS**

Comments Filed by:

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

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

Reply Comments Filed by:

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

Petitions to Deny Filed by:

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

Joint Opposition to Petitions to Deny Filed by:

Sprint Corporation and Nextel Communications, Inc.

Reply to Joint Opposition to Petitions to Deny Filed by:

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

APPENDIX B

LIST OF MARKETS IDENTIFIED FOR FURTHER ANALYSIS BY INITIAL SCREEN

CEAs:

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

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|---------|--|
| CEA2760 | Fort Wayne, IN |
| CEA2800 | Fort Worth-Arlington, TX |
| CEA2840 | Fresno, CA |
| CEA2900 | Gainesville, FL |
| CEA2960 | Gary, IN |
| CEA3000 | Grand Rapids-Muskegon-Holland, MI |
| CEA3180 | Hagerstown, MD-PA |
| CEA3200 | Hamilton-Middletown, OH |
| CEA3283 | Hartford-New Britain-Middletown-Bristol, CT |
| CEA3320 | Honolulu, HI |
| CEA3350 | Houma, LA |
| CEA3360 | Houston, TX |
| CEA3400 | Huntington-Ashland, WV-KY-OH |
| CEA3480 | Indianapolis, IN |
| CEA3500 | Iowa City, IA |
| CEA3520 | Jackson, MI |
| CEA3600 | Jacksonville, FL-GA |
| CEA3720 | Kalamazoo-Battle Creek, MI |
| CEA3760 | Kansas City, MO-KS |
| CEA3800 | Kenosha, WI |
| CEA3810 | Killeen-Temple, TX |
| CEA3880 | Lafayette, LA |
| CEA3920 | Lafayette, IN |
| CEA3960 | Lake Charles, LA |
| CEA3980 | Lakeland-Winter Haven, FL |
| CEA4040 | Lansing-East Lansing, MI |
| CEA4080 | Laredo, TX |
| CEA4120 | Las Vegas, NV-AZ-UT |
| CEA4480 | Los Angeles-Long Beach, CA |
| CEA4520 | Louisville, KY-IN |
| CEA4600 | Lubbock, TX |
| CEA4800 | Mansfield, OH |
| CEA4880 | McAllen-Edinburg-Mission, TX |
| CEA4900 | Melbourne-Titusville-Palm Bay, FL |
| CEA5000 | Miami, FL |
| CEA5190 | Monmouth-Ocean, NJ |
| CEA5330 | Myrtle Beach, SC |
| CEA5345 | Naples, FL |
| CEA5380 | Nassau-Suffolk, NY |
| CEA5483 | New Haven-Bridgeport-Stamford-Danbury-Waterbury, C |
| CEA5523 | New London-Norwich, CT |
| CEA5560 | New Orleans, LA-MS |
| CEA5600 | New York, NY |

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|---------|-------------------------------------|
| CEA5640 | Newark, NJ-PA |
| CEA5660 | Newburgh, NY-PA |
| CEA5775 | Oakland, CA |
| CEA5790 | Ocala, FL |
| CEA5945 | Orange County, CA |
| CEA5960 | Orlando, FL |
| CEA6015 | Panama City, FL |
| CEA6080 | Pensacola, FL |
| CEA6120 | Peoria-Pekin, IL |
| CEA6160 | Philadelphia, PA-NJ |
| CEA6483 | Providence-Warwick-Pawtucket, RI |
| CEA6580 | Punta Gorda, FL |
| CEA6640 | Raleigh-Durham-Chapel Hill, NC |
| CEA6680 | Reading, PA |
| CEA6780 | Riverside-San Bernardino, CA-AZ |
| CEA6840 | Rochester, NY |
| CEA6880 | Rockford, IL |
| CEA6895 | Rocky Mount, NC |
| CEA6960 | Saginaw-Bay City-Midland, MI |
| CEA7040 | St. Louis, MO-IL |
| CEA7240 | San Antonio, TX |
| CEA7320 | San Diego, CA |
| CEA7360 | San Francisco, CA |
| CEA7400 | San Jose, CA |
| CEA7500 | Santa Rosa, CA |
| CEA7510 | Sarasota-Bradenton, FL |
| CEA7560 | Scranton-Wilkes-Barre-Hazleton, PA |
| CEA8200 | Tacoma, WA |
| CEA8240 | Tallahassee, FL-GA |
| CEA8280 | Tampa-St. Petersburg-Clearwater, FL |
| CEA8320 | Terre Haute, IN-IL |
| CEA8480 | Trenton, NJ |
| CEA8720 | Vallejo-Fairfield-Napa, CA |
| CEA8735 | Ventura, CA |
| CEA8760 | Vineland-Millville-Bridgeton, NJ |
| CEA8800 | Waco, TX |
| CEA8840 | Washington, DC-MD-VA-WV |
| CEA8960 | West Palm Beach-Boca Raton, FL |
| CEA9160 | Wilmington-Newark, DE-MD |
| CEA9270 | Yolo, CA |
| CEA9280 | York, PA |
| CEA9340 | Yuba City, CA |
| CEA9360 | Yuma, AZ |

CMA:

| CMA | Name |
|------------|--|
| CMA001 | New York, NY-NJ/Nassau-Suffolk |
| CMA002 | Los Angeles-Long Beach/Anaheim |
| CMA003 | Chicago, IL |
| CMA004 | Philadelphia, PA |
| CMA005 | Detroit/Ann Arbor, MI |
| CMA006 | Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH |
| CMA007 | San Francisco-Oakland, CA |
| CMA008 | Washington, DC-MD-VA |
| CMA009 | Dallas-Fort Worth, TX |
| CMA010 | Houston, TX |
| CMA011 | St. Louis, MO-IL |
| CMA012 | Miami-Fort Lauderdale-Hollywood, FL |
| CMA013 | Pittsburgh, PA |
| CMA014 | Baltimore, MD |
| CMA015 | Minneapolis-St. Paul, MN-WI |
| CMA017 | Atlanta, GA |
| CMA018 | San Diego, CA |
| CMA022 | Tampa-St. Petersburg, FL |
| CMA023 | Cincinnati, OH-KY-IN |
| CMA024 | Kansas City, MO-KS |
| CMA027 | San Jose, CA |
| CMA028 | Indianapolis, IN |
| CMA029 | New Orleans, LA |
| CMA031 | Columbus, OH |
| CMA032 | Hartford-New Britain-Bristol, CT |
| CMA033 | San Antonio, TX |
| CMA034 | Rochester, NY |
| CMA037 | Louisville, KY-IN |
| CMA038 | Providence-Warwick-Pawtucket, RI |
| CMA042 | Bridgeport-Stamford-Norwalk-Danbury, CT |
| CMA044 | Albany-Schenectady-Troy, NY |
| CMA046 | Nashville-Davidson, TN |
| CMA047 | Greensboro-Winston-Salem-High Point, NC |
| CMA048 | Toledo, OH-MI |
| CMA049 | New Haven-West Haven-Waterbury-Meriden, CT |
| CMA050 | Honolulu, HI |
| CMA051 | Jacksonville, FL |
| CMA053 | Syracuse, NY |
| CMA054 | Gary-Hammond-East Chicago, IN |
| CMA056 | Northeast Pennsylvania, PA |

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| CMA058 | Allentown-Bethlehem-Easton, PA |
| CMA060 | Orlando, FL |
| CMA061 | Charlotte-Gastonia, NC |
| CMA064 | Grand Rapids, MI |
| CMA068 | Flint, MI |
| CMA069 | Wilmington, DE-NJ-MD |
| CMA070 | Long Branch-Asbury Park, NJ |
| CMA071 | Raleigh-Durham, NC |
| CMA072 | West Palm Beach-Boca Raton, FL |
| CMA073 | Oxnard-Simi Valley-Ventura, CA |
| CMA074 | Fresno, CA |
| CMA075 | Austin, TX |
| CMA076 | New Bedford-Fall River, MA |
| CMA078 | Lansing-East Lansing, MI |
| CMA080 | Baton Rouge, LA |
| CMA081 | El Paso, TX |
| CMA082 | Tacoma, WA |
| CMA084 | Harrisburg, PA |
| CMA088 | Chattanooga, TN-GA |
| CMA093 | Las Vegas, NV |
| CMA094 | Saginaw-Bay City-Midland, MI |
| CMA096 | Fort Wayne, IN |
| CMA097 | Bakersfield, CA |
| CMA099 | York, PA |
| CMA101 | Beaumont-Port Arthur, TX |
| CMA103 | Peoria, IL |
| CMA104 | Newport News-Hampton, VA |
| CMA107 | Stockton, CA |
| CMA110 | Huntington-Ashland, WV/KY/OH |
| CMA111 | Vallejo-Fairfield-Napa, CA |
| CMA112 | Corpus Christi, TX |
| CMA114 | Lakeland-Winter Haven, FL |
| CMA116 | Lexington-Fayette, KY |
| CMA117 | Colorado Springs, CO |
| CMA118 | Reading, PA |
| CMA121 | Trenton, NJ |
| CMA122 | Binghamton, NY |
| CMA123 | Santa Rosa-Petaluma, CA |
| CMA127 | Pensacola, FL |
| CMA128 | McAllen-Edinburg-Mission, TX |
| CMA129 | South Bend-Mishawaka, IN |
| CMA131 | Rockford, IL |
| CMA132 | Kalamazoo, MI |
| CMA133 | Manchester-Nashua, NH |

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| CMA134 | Atlantic City, NJ |
| CMA137 | Melbourne-Titusville-Palm Bay, FL |
| CMA138 | Macon-Warner Robins, GA |
| CMA142 | Modesto, CA |
| CMA144 | Orange County, NY |
| CMA145 | Hamilton-Middletown, OH |
| CMA146 | Daytona Beach, FL |
| CMA149 | Fayetteville, NC |
| CMA151 | Poughkeepsie, NY |
| CMA154 | New London-Norwich, CT |
| CMA160 | Killeen-Temple, TX |
| CMA161 | Lubbock, TX Counties - Lubbock |
| CMA162 | Brownsville-Harlingen, TX |
| CMA164 | Fort Myers, FL Counties - Lee |
| CMA167 | Sarasota, FL |
| CMA168 | Tallahassee, FL |
| CMA171 | Reno, NV |
| CMA174 | Lafayette, LA |
| CMA177 | Battle Creek, MI |
| CMA180 | Springfield, OH |
| CMA181 | Muskegon, MI |
| CMA184 | Houma-Thibodaux, LA |
| CMA185 | Terre Haute, IN |
| CMA188 | Amarillo, TX |
| CMA191 | Yakima, WA |
| CMA192 | Gainesville, FL |
| CMA193 | Benton Harbor, MI |
| CMA196 | Champaign-Urbana-Rantoul, IL |
| CMA197 | Lake Charles, LA |
| CMA207 | Jackson, MI |
| CMA208 | Fort Pierce, FL |
| CMA209 | Clarksville-Hopkinsville, TN/KY |
| CMA211 | Bradenton, FL |
| CMA212 | Bremerton, WA |
| CMA214 | Richland-Kennewick-Pasco, WA |
| CMA215 | Chico, CA |
| CMA223 | Elkhart-Goshen, IN |
| CMA228 | Vineland-Millville-Bridgeton, NJ |
| CMA231 | Mansfield, OH |
| CMA241 | Pueblo, CO |
| CMA242 | Olympia, WA |
| CMA244 | Kenosha, WI |
| CMA245 | Ocala, FL |
| CMA247 | Lafayette, IN |

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| CMA249 | Anniston, AL |
| CMA250 | Bloomington-Normal, IL |
| CMA256 | Charlottesville, VA |
| CMA257 | Hagerstown, MD |
| CMA270 | Bellingham, WA |
| CMA274 | Yuba City, CA |
| CMA278 | Columbia, MO |
| CMA281 | Laredo, TX |
| CMA283 | Panama City, FL |
| CMA287 | Bryan-College Station, TX |
| CMA294 | San Angelo, TX |
| CMA295 | Midland, TX |
| CMA296 | Iowa City, IA |
| CMA300 | Victoria, TX |
| CMA318 | Arizona 1 - Mohave |
| CMA321 | Arizona 4 - Yuma |
| CMA322 | Arizona 5 - Gila |
| CMA323 | Arizona 6 - Graham |
| CMA342 | California 7 - Imperial |
| CMA357 | Connecticut 1 - Litchfield |
| CMA359 | Delaware 1 - Kent |
| CMA360 | Florida 1 - Collier |
| CMA361 | Florida 2 - Glades |
| CMA362 | Florida 3 - Hardee |
| CMA363 | Florida 4 - Citrus |
| CMA364 | Florida 5 - Putnam |
| CMA366 | Florida 7 - Hamilton |
| CMA370 | Florida 11 - Monroe |
| CMA386 | Hawai 2 - Maui |
| CMA394 | Illinois 1 - Jo Davie |
| CMA449 | Kentucky 7 - Trimble |
| CMA459 | Louisiana 6 - Iberville |
| CMA460 | Louisiana 7 - West Feliciana |
| CMA468 | Maryland 2 - Kent |
| CMA469 | Maryland 3 - Frederick |
| CMA478 | Michigan 7 - Newaygo |
| CMA480 | Michigan 9 - Cass |
| CMA514 | Missouri 11 - Moniteau |
| CMA545 | Nevada 3 - Storey |
| CMA546 | Nevada 4 - Mineral |
| CMA572 | North Carolina 8 - Northampton |
| CMA579 | North Carolina 15 - Cabarrus |
| CMA585 | Ohio 1 - Williams |
| CMA586 | Ohio 2 - Sandusky |

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| CMA588 | Ohio 4 - Mercer |
| CMA589 | Ohio 5 - Hancock |
| CMA590 | Ohio 6 - Morrow |
| CMA591 | Ohio 7 - Tuscarawas |
| CMA592 | Ohio 8 - Clinton |
| CMA593 | Ohio 9 - Ross |
| CMA621 | Pennsylvania 10 - Bedford |
| CMA629 | South Carolina 5 - Georgetown |
| CMA633 | South Carolina 9 - Lancaster |
| CMA651 | Tennessee 9 - Maury |
| CMA659 | Texas 8 - Gaines |
| CMA670 | Texas 19 - Atascosa |
| CMA671 | Texas 20 - Wilson |
| CMA676 | Utah 4 - Beaver |
| CMA690 | Virginia 10 - Frederick |
| CMA691 | Virginia 11 - Madison |
| CMA693 | Washington 1 - Clallam |
| CMA698 | Washington 6 - Pacific |

**APPENDIX C
MARKET-SPECIFIC ANALYSIS**

**EXAMINATION OF MARKETS IDENTIFIED BY
SUBSCRIBER ABSORPTION CAPACITY (SAC) ANALYSIS**

As set forth in the Memorandum Opinion and Order,⁴³⁶ our in-depth analysis of all mobile telephony markets flagged by our initial screen for further review has three parts: a general examination of the possibility of coordinated interaction; a general examination of the possibility of unilateral effects; and, finally, a more granular examination of individual local markets. In undertaking the in-depth analysis, we have looked at data presented by CEA and by the smaller CMA regions, and we have also considered how circumstances vary within these regions.⁴³⁷ In our analysis of each of these markets, we have found that competitive harm is unlikely, primarily because post-merger there will be a continuing presence of multiple other carriers with the capacity to add subscribers. In addition, we have found no local markets that are exceptions to this general conclusion, and thus none for which a localized divestiture condition would be appropriate. This is largely a result of the fact that neither Sprint nor Nextel were among the early A and B block cellular providers when mobile telephony was licensed on a duopoly basis. Rather, in markets where Sprint and Nextel both are substantially built-out, there are at least two other providers with a significant presence (the original A and B block cellular providers or their successors-in-interest), and often more than two other providers.

In this Appendix, we take the additional step of examining, in detail, the seven specific markets of potential concern identified in the Subscriber Absorption Capacity (SAC) analysis submitted by Applicants.⁴³⁸ The SAC test examined BTA markets and identified seven in which there might be the potential that competing firms might not be able to absorb ten percent or more of the subscribers of the proposed merged entity. We analyze these markets by BTAs because the SAC analysis uses these markets; we also note that our conclusions would not be altered if we instead had focused primarily on the CEA or CMA areas that overlap these BTAs.⁴³⁹ Based on consideration of the same set of variables we applied in examining CEAs and CMAs, plus discussion of the SAC analysis, we determine that competitive harm is unlikely in any of these BTAs.

⁴³⁶ See *infra* Section V.B.2(a)-(c).

⁴³⁷ In undertaking this analysis, we considered variables that the general analyses indicate are important for predicting the incentives of the merged entity and potential responses of rivals. These included: the number and identity of rival carriers; the number of firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the market's concentration and change in concentration; the merged entity's post-transaction market share; the share of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the rival carriers identified. In reaching determinations on specific markets, we balanced these factors on a market-specific basis, and considered the totality of the circumstances in each market. *See id.*

⁴³⁸ We use the Applicants' revised SAC analysis, which is contained in the Applicants' response to Information Request Sprint 13/Nextel 12.

⁴³⁹ Note that had we run our initial screen using BTAs instead of CEAs or CMAs, these seven BTAs would have been included among the markets identified by our initial screen criteria as requiring further analysis.

The market share and HHI data are computed using two data sources: (1) data compiled in our Numbering Resource Utilization / Forecast (NRUF) database, which tracks phone number usage by all telecommunications carriers, including wireless carriers, in the United States; and (2) data submitted by certain carriers in response to our information request in this proceeding. These sources yield two sets of market share and HHI figures. We used the June 2004 NRUF data to compute “NRUF HHIs.” In addition, we computed “Blended HHIs” using December 2004 data received in response to our request in this proceeding.⁴⁴⁰ Although the figures derived from these sources give different results in some cases (expressed in the ranges given below), our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm as a result of this transaction. We also analyze carrier launch and coverage information available from a variety of public sources which provide geographic service provision data, and spectrum holdings, which we obtained from our licensing databases and from the Applications. Our multi-factor, market-specific analysis employs a combination of the information derived from all of the data sources described above, and it provides a reliable basis for making our determinations herein.

Big Spring, TX (BTA 40)

In the Big Spring, Texas BTA (which has a population of 40,000 and a population density of about 13 POPs/sq. mile⁴⁴¹), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers while Nextel has between [REDACTED] and [REDACTED] percent; combined, these two entities would have a post-merger share of between [REDACTED] and [REDACTED] percent. Even after the transaction, ALLTEL would continue to hold the largest market share with between [REDACTED] and [REDACTED] percent of the BTA’s wireless subscribers. Also, Wes-Tex Telephone will hold between [REDACTED] and [REDACTED] percent of the wireless subscribers in this BTA.⁴⁴²

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold 58 MHz of spectrum throughout the BTA. ALLTEL holds 30 MHz in two counties and 25 MHz in the third. Wes-Tex holds 25 MHz where it offers service in the BTA. In addition, Cingular, Poka Lambro, T-Mobile, Verizon Wireless, and West Central Wireless hold spectrum in this BTA, although T-Mobile only has 5 MHz of spectrum in two of the three counties.

⁴⁴⁰ We combined the data received in response to our request with December 2004 NRUF data for carriers that were not subject to that request.

⁴⁴¹ Population and population density figures are based on 2000 Census data.

⁴⁴² In addition, although our NRUF data indicates that [REDACTED].

Nextel has network coverage in most of Howard and Glasscock counties, while Sprint has coverage in most of Howard County. Nextel's and Sprint's network coverage overlap would be approximately 94 percent of the BTA population; if combined, the merged entity would cover 97 percent of the population. ALLTEL covers 100 percent of the BTA population, T-Mobile covers 94 percent, and Wes-Tex Cellular covers 98 percent.

Conclusion. Overall, it appears that the transaction is not likely to result in competitive harm in the Big Spring, TX BTA. Although the merged entity would have a [REDACTED] post-transaction market share in this BTA, it would not [REDACTED]. ALLTEL would continue to have the [REDACTED] market share, and West-Tex's market share would be [REDACTED] with the merged entity's share. The reduction from [REDACTED] to [REDACTED] carriers with market share greater than [REDACTED] percent overstates the likely harm to competition in this BTA. The network coverage overlap of Sprint and Nextel is limited to one out of three counties, and the reduction in the number of competitors with significant network coverage in this county is from [REDACTED] to [REDACTED]. Further, it appears that the merged entity's network coverage in BTA 40 would be just a small part of a larger service area – CEA 5800, Odessa-Midland, TX. If this larger geographic market is used for the competitive analysis, the potential harms are diminished. For example, the change in the HHI for CEA 5800 is [REDACTED]. Therefore this CEA is not identified for further review by the initial screen.

In addition, Cingular appears to be well positioned to expand service into this BTA if the merged entity were to increase price or reduce service. Cingular's [REDACTED] percent market share indicates that it is a robust competitor in CEA 5800. In addition, Cingular has network coverage in an adjacent BTA, and it holds sufficient spectrum in BTA 40 to provide mobile telephony service. Further, the ability of carriers other than the merged entity to add customers in this BTA is likely to be higher than indicated by the Applicants. Although the Applicants' SAC test indicated that rivals may not be able to absorb [REDACTED] percent of the merged entity's customers, it did not include T-Mobile in the analysis of this BTA. Although the data does not indicate that T-Mobile has subscribers in this BTA, T-Mobile's network covers over [REDACTED] percent of the BTA population, and T-Mobile holds 10 MHz of spectrum in the one county for which Sprint and Nextel have overlapping coverage (Howard County).

Midland, TX (BTA 296)

In the Midland, Texas, BTA (which has a population of 120,000 and a population density of about 66 POPs/sq. mile), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers, while Nextel has between [REDACTED] and [REDACTED] percent; if combined, these two entities would have a post-merger share of between [REDACTED] and [REDACTED] percent. There are two other carriers in this BTA with market share greater than [REDACTED] percent. Post-transaction, ALLTEL would continue to hold the largest market share with between [REDACTED] and [REDACTED] percent of the BTA's subscribers. In addition, Cingular will hold between [REDACTED] and [REDACTED] percent of the wireless subscribers in this BTA.

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold 58 MHz throughout the two counties that comprise this BTA. ALLTEL has 25 MHz of spectrum in Martin County and 35 in Midland County. Cingular has 25 MHz of spectrum in Martin County and 50 in Midland County. T-Mobile has 20 MHz of spectrum throughout the BTA. In addition, Verizon Wireless holds spectrum throughout the BTA and Poka Lambo and Wes-Tex hold spectrum in one county.

Sprint and Nextel each cover more than 98 percent of the population, while ALLTEL covers 100 percent, Cingular covers 96 percent, and T-Mobile covers 99 percent.

Conclusion. Overall, it appears that the transaction is not likely to result in competitive harm in the Midland, TX BTA. Although the merged entity would have a [REDACTED] post-transaction market share in this BTA, it would not become the market leader. ALLTEL would continue to have the highest market share and Cingular's market share would also be greater than the merged entity's share. The reduction from [REDACTED] to [REDACTED] carriers with market share greater than [REDACTED] percent overstates the likely harm to competition in this BTA. The number of competitors with significant network coverage in this BTA will be reduced from [REDACTED] to [REDACTED]. Further, it appears that the merged entity's network coverage in BTA 296 would be just a small part of a larger service area – CEA 5800, Odessa-Midland, TX. If this larger geographic market is used for the competitive analysis, the potential harms are diminished. For example, the change in the HHI for CEA 5800 is [REDACTED]. Therefore this CEA is not identified for further review by the initial screen.

In addition, the ability of carriers other than the merged entity to add customers in this BTA is likely to be higher than indicated by the Applicants. Although the Applicants' SAC test indicated that rivals may not be able to absorb [REDACTED] percent of the merged entity's customers, it did not include T-Mobile in the analysis of this BTA. Although the data does not indicate that T-Mobile has subscribers in this BTA, T-Mobile's network covers over [REDACTED] percent of the BTA population, and T-Mobile holds 20 MHz of spectrum throughout the BTA.

Charlottesville, VA (BTA 75)

In the Charlottesville, VA BTA (which has a population of 230,000 and a population density of about 79 POPs/sq. mile), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers, while Nextel has between [REDACTED] and [REDACTED] percent; combined, these two entities would have a post-merger share of [REDACTED] and [REDACTED] percent. The other carriers with market share in this BTA are ALLTEL, with between [REDACTED] and [REDACTED] percent of the subscribers, Triton PCS⁴⁴³ with between [REDACTED] and [REDACTED] percent, NTelos with between [REDACTED] and [REDACTED] percent, US Cellular with between [REDACTED] and [REDACTED] percent, Verizon Wireless with between [REDACTED] and [REDACTED] percent, and T-Mobile with between [REDACTED] and [REDACTED] percent.

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold 60 MHz throughout the BTA. ALLTEL has 25 MHz of spectrum throughout the BTA. NTelos has 20 MHz of spectrum throughout the BTA. US Cellular has 25 MHz of spectrum in Albemarle, Buckingham, Fluvanna, and Greene counties, and the city of Charlottesville. In addition, Cingular, T-Mobile, Triton PCS, Urban Comm, Verizon Wireless, and Virginia Cellular hold spectrum in this BTA.

Sprint has network coverage in five out of seven counties and in Charlottesville City, and Nextel has network coverage in five counties and Charlottesville City. Nextel and Sprint have overlapping network coverage in most of Albemarle and Greene and parts of Madison, Nelson, and Fluvanna counties. The network coverage overlap is approximately 61 percent of the BTA population, and if combined, the merged entity would cover 71 percent of the population. ALLTEL covers 100 percent, NTelos covers 52 percent, and US Cellular covers 77 percent.

Conclusion. Overall, it appears that the transaction is not likely to result in competitive harm in the Charlottesville, VA BTA. Although the merged entity would have a [REDACTED] post-transaction market share in this BTA, it would [REDACTED]. ALLTEL would [REDACTED] market share. Also, the proposed transaction, which would combine the [REDACTED] and [REDACTED] largest carriers in terms of market share, would only decrease the number of carriers with a greater than [REDACTED] percent share from [REDACTED] to [REDACTED]. Further, three of these carriers, [REDACTED], either appear to cover more of the population than Sprint and Nextel combined, or have coverage somewhat similar to Sprint and Nextel. These carriers do appear to have sufficient capacity to absorb customers if the merged entity were to raise price or reduce service following the transaction.

⁴⁴³ Triton PCS has filed an application to assign its spectrum in BTA075 to Cingular. Further, Triton has sold its network and subscriber contracts to Cingular in this BTA. See ULS File No. 0001963918.

Detroit, MI (BTA 112)

In the Detroit, Michigan BTA (which has a population of 4,970,000 and a population density of about 793 POPs/sq. mile), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers and Nextel has between [REDACTED] and [REDACTED] percent; combined, these two entities would have a post-merger share of between [REDACTED] and [REDACTED] percent. There are three other carriers in this BTA with market share greater than [REDACTED] percent. The other carriers with market share are Verizon Wireless, with between [REDACTED] and [REDACTED] percent of the wireless subscribers, Cingular with between [REDACTED] and [REDACTED] percent, T-Mobile with between [REDACTED] and [REDACTED] percent, and ALLTEL, Dobson, and Thumb Cellular with [REDACTED].

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold 56 MHz throughout the BTA. Cingular holds 65 MHz in Lapeer, Livingston, Macomb, Oakland, St Clair Washtenaw, and Wayne counties, and 40 MHz in Monroe, and Sanilac counties. T-Mobile holds 30 MHz throughout the BTA. Verizon Wireless holds 35 MHz in all counties except Sanilac where it holds 10 MHz. In addition, Metro PCS holds spectrum throughout the BTA, and ALLTEL, Dobson, and Thumb Cellular hold spectrum in one county each in this BTA.

Sprint and Nextel have significant overlapping coverage in eight out of nine counties in this BTA, all counties except Sanilac. The network coverage overlap is approximately 98 percent of the BTA population, and if combined the merged entity would cover 99 percent of the population. Cingular covers 99 percent, T-Mobile covers 97 percent, and Verizon Wireless covers 99 percent.

Conclusion. Overall, it appears that the transaction is unlikely to result in competitive harm in the Detroit, MI BTA. Although the merged entity would have a [REDACTED] post-transaction market share in this BTA, there will be three other national carriers with significant market share post-transaction. Also, the proposed transaction, which would combine the [REDACTED] and [REDACTED] largest carriers in terms of market share, would decrease the number of carriers with a greater than [REDACTED] percent share from [REDACTED] to [REDACTED]. Further, the other three national carriers cover more than [REDACTED] percent of the BTA population. Therefore, these carriers have sufficient network coverage to attract customers if the merged entity were to raise price or reduce service following the transaction.

In addition, as the Applicants acknowledge, their SAC test did not take into account the 10 MHz of spectrum that Verizon Wireless acquired earlier this year from NextWave. This additional spectrum will substantially enhance the ability of Verizon Wireless to absorb additional customers in this BTA.

Mount Pleasant, MI (BTA 307)

In the Mount Pleasant, Michigan, BTA (which has a population of 140,000 and a population density of only about 80 POPs/sq. mile), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers while Nextel has between [REDACTED] and [REDACTED] percent; combined, these two entities would have a post-merger share of between [REDACTED] and [REDACTED] percent. There are four other carriers in this BTA with market share greater than [REDACTED] percent: ALLTEL with between [REDACTED] and [REDACTED] percent of the subscribers, Centennial Cellular with between [REDACTED] and [REDACTED] percent, and Dobson with between [REDACTED] and [REDACTED] percent.⁴⁴⁴

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold 58.5 MHz throughout the BTA. ALLTEL has 25 MHz of spectrum throughout the BTA, and Centennial Cellular has 25 MHz of spectrum throughout the BTA. In addition, Cingular, Dobson,⁴⁴⁵ Lite-Wave Communications, Salmon PCS, and Verizon Wireless⁴⁴⁶ hold spectrum in this BTA.

Nextel has [REDACTED] network coverage throughout the BTA, while Sprint has [REDACTED] coverage throughout the BTA. The coverage overlap covers 65.9 percent of the BTA population, and if combined the merged entity would cover 80 percent. ALLTEL covers 99.5 percent of the population and Centennial Cellular covers 85.5 percent. Dobson and Verizon Wireless cover small portions of the population.

⁴⁴⁴ In addition, although our NRUF data indicates that Verizon Wireless does not have subscribers in this BTA, the billing data indicates that Verizon Wireless has [REDACTED] percent of the market.

⁴⁴⁵ Alpine PCS Debtor in Possession filed an application to assign its license in BTA 307 to Dobson. The Commission consented to this application on May 25, 2005. A consummation notification has not been filed for this license. See ULS File No. 0001885064. Also, Lite Wave Communications, LLC filed an application to assign its license in BTA 307 to Dobson. The Commission consented to this application on July 5, 2005. A consummation notification has not been filed for this license. See ULS File No. 0002182069.

⁴⁴⁶ Leap filed an application to assign its license in BTA 307 to Verizon Wireless. The Commission consented to this application on June 22, 2005. A consummation notification has not been filed for this license. See ULS File No. 0002099501.

Conclusion. Overall, it appears that the transaction is not likely to result in competitive harm in the Mount Pleasant, MI BTA. Although the merged entity would have a [REDACTED] post-transaction market share in this BTA, it is unlikely that the merged firm would become the market leader.⁴⁴⁷ ALLTEL likely would continue to have the highest market share. Also, the proposed transaction would decrease the number of carriers with a greater than [REDACTED] percent share from [REDACTED] to [REDACTED]. Further, two of these carriers, ALLTEL and Centennial Cellular, cover more than [REDACTED] percent of the BTA population, and they appear to have sufficient capacity to absorb customers if the merged entity were to raise price or reduce service following the transaction.

Washington DC (BTA 461)

In the Washington DC BTA (which has a population of 4,770,000 and a population density of about 795 POPs/sq mile), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers and Nextel has between [REDACTED] and [REDACTED] percent; combined these two entities would have a post-merger share of between [REDACTED] and [REDACTED] percent. There are three other carriers in this BTA with market share greater than [REDACTED] percent: Verizon Wireless, with between [REDACTED] and [REDACTED] percent of the subscribers, Cingular with between [REDACTED] and [REDACTED] percent, and T-Mobile with between [REDACTED] and [REDACTED] percent.

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold 59 MHz throughout the BTA. Cingular holds 65 MHz in District of Columbia, Calvert, Charles, Montgomery, Prince George's, St. Mary's, Arlington, Culpepper, Fairfax, Loudoun, Prince William, Jefferson, Stafford counties, and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park cities, and 40 MHz in Fauquier, Frederick, and Rappahannock counties. T-Mobile holds 20 MHz throughout the BTA. Verizon Wireless holds 55 MHz in District of Columbia, Calvert, Charles, Frederick, Montgomery, Prince George's, St. Mary's, Arlington, Culpepper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, and Stafford counties, and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park cities, and 30 MHz in Jefferson County. In addition, ALLTEL, Dobson, and US Cellular hold spectrum in this BTA.

Sprint and Nextel have significant overlapping coverage in all counties except Jefferson, Rappahannock, and Culpepper. This overlap covers over 90 percent of the BTA's population,

⁴⁴⁷ The market share numbers obtained from the different data sources indicate that there is some potential for the merged entity to have the highest market share in this BTA, although it appears more likely that ALLTEL would hold the largest post-transaction market share.

and if combined, the merged entity would cover over 98 percent of the population. Cingular covers 99.6 percent, T-Mobile covers 93.2 percent, and Verizon Wireless covers 98.7 percent.

Conclusion. Overall, it appears that the transaction is not likely to result in competitive harm in the Washington, DC BTA. The transaction would lead to a [REDACTED] market share for the merged entity. However, there will remain four national carriers with significant market share post-transaction. The proposed merger would decrease the number of carriers with greater than [REDACTED] percent of the market from [REDACTED] to [REDACTED]. In addition, the three other nationwide carriers cover more than [REDACTED] percent of the BTA population. Therefore, these carriers have sufficient network coverage to attract customers if the merged entity were to raise price or reduce service following the transaction. Several other carriers also have spectrum and these potential entrants may provide some added constraint on the merged entity's behavior. In addition, as the Applicants acknowledge, their SAC test did not take into account the 20 MHz of spectrum recently purchased by Verizon Wireless from NextWave. This additional spectrum would substantially enhance the ability of Verizon Wireless to absorb additional customers in this BTA.

Los Angeles, CA (BTA 262)

In the Los Angeles, California BTA (which has a population of 16,390,000 and a population density of about 369 POPs/sq mile), Sprint has between [REDACTED] and [REDACTED] percent of the wireless subscribers, while Nextel has between [REDACTED] and [REDACTED] percent; combined, the merged entity would have a post-merger share of between [REDACTED] and [REDACTED] percent. The other carriers with market share in this BTA are Cingular, with between [REDACTED] and [REDACTED] percent of the wireless subscribers, Verizon Wireless with between [REDACTED] and [REDACTED] percent, and T-Mobile with between [REDACTED] and [REDACTED] percent.

The post-merger HHI in the BTA would be between [REDACTED] and [REDACTED], with an increase of between [REDACTED] and [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this BTA, post-transaction would be more robust than the HHI figures suggest for several reasons.

The merged entity would hold from 54.55 MHz to 57.25 MHz throughout the BTA, with the variation depending on Nextel's spectrum holdings in individual counties. Cingular holds 40 MHz in Inyo County and 65 MHz in all the other counties⁴⁴⁸. Verizon Wireless holds 55 MHz throughout the BTA, and T-Mobile holds 20 MHz throughout the BTA. In addition, ALLTEL holds spectrum in Inyo County (and has launched service there), and Metro PCS was the winning bidder in Auction No. 58 for a 10 MHz license in this BTA.

⁴⁴⁸ Cingular is leasing 20 MHz of spectrum to T-Mobile in Inyo, L.A., Orange, Riverside, San Bernadino, and Ventura Counties. This lease is a long-term, de facto lease.

Sprint has network coverage in parts of five out of six counties in this BTA (all but Inyo County) and Nextel has coverage in parts of all six counties. The 5-county network coverage overlap covers approximately 95 percent of the BTA population. If combined, the merged entity would cover 99.6 percent of the population. Cingular covers 99.9 percent, Verizon Wireless covers 100 percent, and T-Mobile covers 89.8 percent.

Conclusion. Overall, it appears that the transaction is not likely to result in competitive harm in the Los Angeles, CA BTA. Although the merged entity would have a [REDACTED] post-transaction market share in this BTA, there will be three other national carriers in this BTA with significant market share post-transaction, and the merged firm would [REDACTED]. Also, the proposed transaction would combine only the [REDACTED] and [REDACTED] largest carriers in terms of market share. Further, there would remain four carriers with greater than [REDACTED] percent of the market. In addition, the other three national carriers cover more than [REDACTED] percent of the BTA population and these carriers have sufficient network coverage to attract customers if the merged entity were to raise price or reduce service following the transaction. Finally, the Applicants' SAC analysis did not take into account the 10 MHz of spectrum that Verizon Wireless acquired earlier this year from NextWave, nor did it take into account MetroPCS's winning bid for 10 MHz of spectrum in Auction No. 58. This additional spectrum will enhance the ability of Verizon Wireless and MetroPCS to absorb additional customers in this BTA.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

***In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation for
Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63.***

Today, we inject a healthy and strengthened dose of intermodal competition into an already competitive U.S. communications market. By approving this transaction, we allow the creation of the nation's largest independent wireless carrier; one that will be a stronger and more robust competitor to wireline and other nationwide wireless carriers. While I have agreed to support the conditions mutually agreed upon between the Applicants and some of my colleagues, I am pleased that we do not impose extensive and unnecessary conditions on our approval. It would be a mistake to hamstring the merged entity's ability to provide the anticipated pro-competitive services to U.S. consumers.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

***In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation for
Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63.***

Our data convinces me that this merger is not likely to reduce competition to an unacceptable level in markets where the two companies overlap. In most markets Nextel and Sprint are not market share leaders. As a consequence, the merger of these companies does not give the combined entity a dominant position or even the largest market share in most markets. Sprint Nextel, however, will be the market share leader in a small number of markets. But in most of these markets four or more substantial competitors will continue to compete post-merger. In most of the rest of these markets, one or the other applicant has little or no market share, so the merger does not significantly change the competitive situation.

As the Order notes, however, while this merger does not create market dominance in any particular market, it is part of a trend that merits close and continuing monitoring by the Commission. In less than a year mergers have reduced the number of national wireless competitors by one third. Only last year consumers could choose between six national carriers. There are now only four. The average US market's HHI score has grown from 2,900 (before the Cingular/AT&T merger) to 3,100 (after the Cingular/AT&T merger) to 3,300 (after the Nextel/Sprint merger). That means that consumers in the average community now have the equivalent of only 3.03 equal sized competitors—national, regional and local combined. While I am sensitive to the arguments that six national competitors could not have been forever sustained in the wireless market, I am also concerned about what this substantial reduction in the number of competitors may mean for wireless consumers. The FCC will have to take a hard look at whether we have gone about as far as we can go.

Apart from our market-by-market analysis, the FCC must also judge whether the merged entity will act in the public interest and whether the applicants have the requisite "citizenship, character, financial, technical, and other qualifications." Measuring a company's compliance with FCC public safety rules is, to my mind, central to this determination. Under our 911 public safety rules, ninety-five percent of the applicants' customers must have handsets that can locate a caller when they place a 911 call by the end of this year. Nextel has admitted that it will violate this rule and will miss the deadline by an alarming two years.

I believe we should have conditioned approval of this merger on Sprint Nextel either meeting its 911 deadline, or having a waiver or consent decree in place. We should have insisted that Sprint Nextel immediately get itself on a path to full public safety compliance. I am disappointed that we do not do more today to ensure compliance with our public safety deadline. I hope that we do not pay a price for this decision, because Nextel's efforts to comply with our rules do not seem to be working. I am pleased, however, that the company is considering stepping up its efforts to comply with our public safety rules by, for example, offering cash incentives to spur necessary upgrades. But whatever efforts Sprint Nextel now takes, unless the company has a waiver or consent decree approved by the FCC, it must still meet its December 31, 2005 deadline. If it does not do so, and if there is no acceptable waiver or consent decree in

place, today's Order states explicitly that the Commission "will not hesitate to take enforcement action."

Finally, I want to commend my colleague Commissioner Adelstein for his hard work on this item, particularly on issues related to the 2.5 GHz band and the wireline spin-off. I was pleased to support his effort to obtain a condition that the merged entity must meet wireless broadband deployment milestones using its 2.5 GHz holdings. This is vitally important spectrum that needs to be utilized fully. I hope that these milestones will bring consumers some much needed broadband competition. I am also happy to support the condition related to the merged entity's wireline spin-off. This will help ensure that the spin-off company is not weighted down by misallocations that could inhibit its ability to compete. The merged entity has committed that the "LTD Holding Company will receive an equitable debt and asset allocation at the time of its proposed spin-off so that the company will be a financially secure, Fortune 500 company." The continued strength of this company is critically important to its workers and its customers. The Commission will monitor this commitment when we review the merged entity's application to effectuate this spin-off.

Thanks to the merger team for all their hard work in bringing this proceeding to us today.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

***In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation
For Consent to Transfer of Control of Licenses and Authorizations, WT Docket No.
05-63.***

While I am somewhat troubled by the recent trend of consolidation among mobile wireless carriers, I support this merger because it is critical to have a strong independent carrier in the wireless industry to rival those wireless providers that are predominantly controlled by regional bell operating companies. Approving this merger will better balance the competitive landscape by granting Sprint Nextel similar scale and scope to the nation's largest nationwide carriers.

Compared to the original cellular providers, Sprint and Nextel are relative newcomers to the mobile wireless industry, and they have taken different paths to achieve their recent industry success. Sprint aggressively rolled out the first digital Personal Communications Service network, while Nextel transformed the 800 and 900 MHz Specialized Mobile Radio bands with its own service offering, including a well known push to talk feature. I am hopeful that this merger will allow the companies to continue to develop together their unique product offerings and services and build on their respective strengths for the benefit of consumers. We want to see innovation like this succeed. Indeed, it will be critical for telecommunications competition in the future.

In this vein, I am very pleased that the companies have committed to specific milestones in the deployment of services in the 2.5 GHz band. I initially had concerns about Sprint Nextel amassing such a wide swath of spectrum in this band without providing any clear plan for deployment. I raised these issues with the companies, and have been encouraged by their response. They met my concerns head on by providing a specific schedule of implementation milestones that will ensure wireless broadband services will be deployed to at least 30 million Americans across a number of markets, both large and small. And, just as important, they put their money where their mouth is by agreeing to be subject to enforcement action in the event Sprint Nextel fails to meet these commitments for reasons of circumstances within the company's control.

This truly is a banner commitment for the wireless broadband industry. It is said that a rising tide lifts all boats, and I believe that the Sprint Nextel investment will help all providers in the 2.5 GHz band. This level of effort will benefit to all stakeholders in the band, particularly Education Broadband Services licensees and the equipment and vendor communities. The infusion of capital into this market should significantly stimulate product and service offerings that ultimately will benefit both the commercial and educational segments of the 2.5 GHz industry.

Finally, I also appreciate the company's efforts to address my concerns about the financial health of the spin-off of the incumbent local telephone operations. In a recent filing, the Chief Executive Officers of both Sprint and Nextel indicated that the new local telephone

company “will receive an equitable debt and asset allocation at the time of its proposed spin-off so that the company will be a financially secure, Fortune 500 company.” This positive step will protect Sprint's wireline employees and ensure millions of primarily rural wireline customers continue to see a high level of service and investment in advanced services.