

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

In the Matter of)	
)	
Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees)	File Nos. 0002444650 0002444656 0002456809
)	
For Consent To Transfer Control of Licenses and Authorizations)	

MEMORANDUM OPINION AND ORDER

Adopted: June 16, 2006

Released: June 20, 2006

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

I. INTRODUCTION

1. In this Order, we consider applications filed by Nextel Partners, Inc. (“Nextel Partners”) and Nextel WIP Corp. and its parent, Sprint Nextel Corporation (“Sprint Nextel”) (collectively, the “Applicants”), for consent to the transfer of control of the wireless authorizations indirectly held by Nextel Partners to Sprint Nextel.¹ The wireless licenses held by Nextel Partners include both Economic Area (“EA”) and site-based licenses in the 800 MHz Specialized Mobile Radio (“SMR”) service, one Metropolitan Trade Area (“MTA”) license in the 900 MHz SMR service, and common carrier fixed point-to-point microwave licenses.²

2. Pursuant to Section 310(d) of the Communications Act of 1934, as amended (“Communications Act”),³ we must determine whether the Applicants have demonstrated that the proposed acquisition of Nextel Partners and the licenses that it holds would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have met that burden, and that granting consent to the proposed transfer of control, without the imposition of any additional conditions, would further the public interest.

II. BACKGROUND

3. Sprint Nextel was formed on August 12, 2005, by the merger of Sprint Corporation (“Sprint”) and Nextel Communications, Inc. (“Nextel”) pursuant to the Commission’s grant of consent to

¹ Applications of Nextel Partners, Inc. and Nextel WIP Corp. for Consent To Transfer of Control, File Nos. 0002444650, 0002444656, and 0002456809 (filed Jan. 24, 2006) (“Applications”). File Nos. 0002444650 and 0002444656 were amended on February 2, 2006. The applicants also filed on January 25, 2006 an application, File No. ITC-T/C-20060125-00043, for consent to transfer control of an international Section 214 authorization to provide global resale service, File No. ITC-214-20010501-0277, held by Nextel Partners, Inc., to Nextel WIP Corp. This application was granted on March 31, 2006. See International Authorizations Granted, *Public Notice*, DA No. 06-810 (rel. Apr. 6, 2006).

² Applications, Description of Transaction and Public Interest Statement at 1.

³ 47 U.S.C. § 310(d).

the transaction.⁴ Sprint Nextel is a publicly traded Kansas corporation with its corporate headquarters in Reston, Virginia, and its operations headquarters in Overland Park, Kansas.⁵ The company provides digital wireless voice and data communications using two distinct networks – one using Code Division Multiple Access (“CDMA”) technology at 1.9 GHz, and one using integrated Digital Enhanced Network (“iDEN”) technology at 800 and 900 MHz.⁶

4. Nextel Partners is incorporated in Delaware and headquartered in Kirkland, Washington.⁷ Nextel Partners initially was formed as a separate company in 1999 through a joint venture among Nextel and several financial investors.⁸ Nextel Partners subsequently became a publicly-traded company, and Sprint Nextel currently owns 32 percent of the outstanding stock of Nextel Partners.⁹ Nextel Partners currently provides digital wireless communications using iDEN technology under the Nextel brand name in mid-sized, secondary, and rural U.S. markets – specifically, to 97 of the top 300 Metropolitan Statistical Areas (“MSAs”).¹⁰

5. The transfer of control will be accomplished by Sprint Nextel, through its wholly-owned subsidiary Nextel WIP Corp., purchasing the remaining stock – 68 percent – of Nextel Partners.¹¹ This transaction will occur pursuant to the shareholders of Nextel Partners exercising certain “put rights” available under the terms of the Nextel Partners’ Certificate of Incorporation and triggered by the merger of Sprint and Nextel.¹² At the conclusion of the transaction, Sprint Nextel will indirectly own 100 percent of the shares of Nextel Partners.

6. The Applications were placed on public notice on March 15, 2006.¹³ SouthernLINC Wireless filed a Petition on March 29, 2006,¹⁴ in which it expressly states that it does not oppose the grant of the Applications¹⁵ but in which it urges the Commission “to adopt a condition that would oblige Applicants to provide requesting third party carriers automatic roaming for voice, digital dispatch, and

⁴ Applications, Description of Transaction and Public Interest Statement at 4; *see* Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967 (2005) (“*Sprint-Nextel Order*”).

⁵ Applications, Description of Transaction and Public Interest Statement at 4.

⁶ *Id.* at 5.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 1, 2 n.2.

¹² *Id.* at 5.

¹³ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and *De Facto* Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2435 (rel. Mar. 15, 2006). The Applications have been removed from streamlined processing. *See* Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications Action, *Public Notice*, Report No. 2468 (rel. Apr. 12, 2005); Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications Action, *Public Notice*, Report No. 2468A (rel. Apr. 12, 2005).

¹⁴ Petition of SouthernLINC Wireless (filed Mar. 29, 2006) (“SouthernLINC Wireless Petition”).

¹⁵ *Id.* at i, 1.

data services at reasonable rates and on reasonable and nondiscriminatory terms and conditions.”¹⁶ Sprint Nextel and Nextel Partners each filed oppositions to the SouthernLINC Wireless Petition,¹⁷ and SouthernLINC Wireless filed a reply.¹⁸

III. DISCUSSION

7. *Standard of Review.* In considering an application for the transfer of control of licenses, the Commission must determine, pursuant to Section 310(d) of the Communications Act, whether the Applicants have demonstrated that the proposed transfer of control of licenses will serve the public interest, convenience, and necessity.¹⁹ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act, the Commission’s rules, and federal communications policy.²⁰ The public interest standard of Section 310(d) involves a balancing process that weighs the potential public interest harms of the proposed transaction against the potential public interest benefits.²¹ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²²

¹⁶ *Id.* at 1.

¹⁷ Sprint Nextel Corporation Opposition to Petition of SouthernLINC Wireless (filed Apr. 4, 2006) (“Sprint Nextel Opposition”); Opposition of Nextel Partners to Petition of SouthernLINC Wireless To Condition Grant of Applications (filed Apr. 3, 2006) (“Nextel Partners Opposition”).

¹⁸ Reply of SouthernLINC Wireless to Oppositions of Sprint Nextel and Nextel Partners (filed Apr. 17, 2006) (“SouthernLINC Wireless Reply”).

¹⁹ 47 U.S.C. § 310(d).

²⁰ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21543 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”); 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, WT Docket 03-217, *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, MB Docket No. 03-124, *Memorandum Opinion and Order*, 19 FCC Rcd 473, 483 ¶ 16 (2004) (“*GM-News Corp. Order*”); Applications to Assign Wireless Licenses from WorldCom Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., WT Docket No. 03-203, *Memorandum Opinion and Order*, 19 FCC Rcd 6232, 6241 ¶ 23 (WTB, MB 2004) (“*Nextel-WorldCom Order*”); Applications of TeleCorp PCS, Inc., Tritel, Inc., and Indus, Inc., WT Docket No. 00-130, *Memorandum Opinion and Order*, 16 FCC Rcd 3716, 3721-22 ¶ 12 (WTB 2000) (“*TeleCorp-Tritel Order*”).

²¹ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40; *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, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26492 ¶ 12 (2003) (“*WorldCom Order*”); VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9789 ¶ 17 (2001) (“*Deutsche Telekom-VoiceStream Order*”); *Nextel-WorldCom Order*, 19 FCC Rcd at 6241-42 ¶ 23.

²² See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40; *Cingular-NextWave Order*, 15 FCC Rcd at 2581 ¶ 24; *GM-News Corp. Order*, 19 FCC Rcd at 483 ¶ 15.

8. In addition, the Commission must ascertain whether a petition to deny contains specific allegations of fact sufficient to show that grant of the application would, in fact, be contrary to the public interest, convenience, and necessity.²³ The Commission places the burden of presenting material questions of fact on the petitioner.²⁴ If the Commission finds that there are no substantial or material questions of fact and that grant of the application would further the public interest, it shall grant the application, and deny (with explanation) any petitions filed against that application.²⁵

9. 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.²⁶ 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.²⁷ Despite our broad authority, we have held that we will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)²⁸ and that are fairly related to the Commission's responsibilities under the Communications Act and related statutes.²⁹ Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.³⁰

10. *Licensee Qualifications.* As an initial matter, we address whether the Applicants meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Communications Act and the Commission's rules.³¹ In this proceeding, SouthernLINC Wireless raises no issues with respect to

²³ 47 U.S.C. § 309(d)(1).

²⁴ *Id.*

²⁵ 47 U.S.C. § 309(d)(2).

²⁶ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). See also *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).

²⁷ 47 U.S.C. § 303(r). See also *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43; *United States 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).

²⁸ See *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545-46 ¶ 43; *GM-News Corp. Order*, 19 FCC Rcd at 534 ¶ 131.

²⁹ See *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

³⁰ See *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43; *GM-News Corp. Order*, 19 FCC Rcd. at 534 ¶ 131 ("An application for a transfer of control of Commission licenses is not an opportunity to correct any and all perceived imbalances in the industry. These issues are best left to broader industry-wide proceedings.").

³¹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see, e.g., *Sprint-Nextel Order*, 12 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd at 2581 ¶ 25; *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; *Nextel-WorldCom Order*, 19 FCC Rcd at 6242 ¶ 24; *Global Crossing LTD. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, IB Docket No. 02-286, Order and Authorization*, 18 FCC Rcd 20301, 20316 ¶ 18 (IB, WTB, WCB 2003) ("*Global Crossing Order*"); *Northcoast Communications, LLC and Cellco Partnership d/b/a*

(continued....)

the basic qualifications of either Sprint Nextel or Nextel Partners. As a general rule, the Commission does not 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.³² Because neither circumstance applies in this case, we have no need to re-evaluate Nextel Partners' qualifications, and decline to do so. As a required part of our public interest analysis, however, Section 310(d) requires the Commission to consider whether the proposed assignee or transferee is qualified to hold Commission licenses.³³ We conclude that Sprint Nextel has the requisite qualifications to acquire control of the licenses at issue. The Commission has previously found Sprint Nextel to be qualified to be a licensee, and it remains a licensee, directly or indirectly, in good standing.

11. *Public Interest Assessment.* In undertaking our public interest analysis of the proposed transaction, we first find that the proposed transfer of control raises no competitive issues. Indeed, when the Commission considered the merger of Sprint and Nextel, it specifically decided 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."³⁴ The Commission concluded that "[t]his conservative approach ensures that we [do not] 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)."³⁵ In the *Sprint-Nextel Order*, the Commission explicitly concluded that "public interest harm is unlikely as a result of this transaction" and that "carrier conduct will remain sufficiently competitive to ensure that market performance will not be impaired."³⁶

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Verizon Wireless, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd 6490, 6492 ¶ 5 (CWD 2003) ("*Verizon-Northcoast Order*").

³² See, e.g., *Sprint-Nextel Order*, 12 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd at 2581-82 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd at 26493-94 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd at 9790 ¶ 19; Applications of SBC Communications Inc. and BellSouth Corporation, WT Docket No. 00-81, *Memorandum Opinion and Order*, 15 FCC Rcd 25459, 25465 ¶ 14 (2000) ("*SBC-BellSouth Order*"); *Nextel-WorldCom Order*, 19 FCC Rcd at 6242 at ¶ 24; *Global Crossing Order*, 18 FCC Rcd at 20316 ¶ 18; *Verizon-Northcoast Order*, 18 FCC Rcd at 6492 ¶ 5; *TeleCorp-Tritel Order*, 16 FCC Rcd at 3723 ¶ 13.

³³ See, e.g., *Sprint-Nextel Order*, 12 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd at 2582 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd at 26494 ¶ 13; *Nextel-WorldCom Order*, 19 FCC Rcd at 6242 ¶ 24.

³⁴ *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 33. The Commission specifically labeled Nextel Partners an affiliate of Nextel – and Nextel's only affiliate – in describing Nextel in the *Sprint-Nextel Order*. *Id.* at 13971 ¶ 7 ("Nextel together with its affiliate, Nextel Partners, currently utilize the iDEN technology to serve 297 of the top 300 markets where about 260 million people live or work."). In addition, Sprint had, at the time it and Nextel filed their merger applications, 12 independent affiliates. *Id.* at 13972 ¶ 9 n.24. At the same time, the Commission stated that, "in analyzing the possible benefits, we exclude the affiliates," so as to "[not] overstate potential public benefits." *Id.* at 13982 ¶ 33.

³⁵ *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 33.

³⁶ *Sprint-Nextel Order*, 20 FCC Rcd at 14035 ¶ 184. The Commission did impose a condition on the merged company 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." *Id.* at 14035 ¶ 190. In addition, the Commission 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." *Id.* at 14036 ¶ 192.

Thus, the Commission has already addressed any potential competitive harms that might be associated with Sprint Nextel acquiring full ownership and control of Nextel Partners.

12. *SouthernLINC Wireless Proposed Condition.* In support of its request to impose a condition on the grant of the Applications, SouthernLINC Wireless asserts that the proposed transaction will lead to “a reduction in the number of iDEN nationwide roaming partners for smaller, rural, and/or regional providers.”³⁷ Further, SouthernLINC Wireless claims that, in reviewing the acquisition of full control of Nextel Partners by Sprint Nextel, “the Commission should analyze the impact of this proposed transaction on the separate market for wholesale [Commercial Mobile Radio Services (“CMRS”)] services such as iDEN roaming, particularly where a monopoly situation is involved that will directly affect consumer access to wireless services, consumer price, and consumer choice.”³⁸ SouthernLINC Wireless details the alleged problems it has had in obtaining roaming service with Nextel and Nextel Partners, noting that it also detailed these alleged problems to an even greater extent in its comments on the proposed merger of Sprint and Nextel.³⁹

13. SouthernLINC Wireless argues that the condition it proposes “is merger-specific and provides a narrowly tailored and appropriate means to address the specific competitive harms resulting from the consolidation of nationwide iDEN services within a single carrier.”⁴⁰ SouthernLINC Wireless acknowledges that the Commission rejected a similar request by SouthernLINC Wireless in the context of the Sprint-Nextel proceeding, citing the Commission’s discussion that “the merger of Sprint and Nextel ‘[would] not reduce the number of iDEN or CDMA nationwide roaming partners for smaller, rural, and/or regional providers’ and therefore ‘does not create merger-specific competitive harm in the market for roaming services.’”⁴¹ As noted above, SouthernLINC Wireless argues that the current transaction under review raises different issues, since the number of iDEN nationwide roaming partners will be reduced.⁴² According to SouthernLINC Wireless, “[i]f the merged company denies automatic roaming to SouthernLINC Wireless customers, these consumers will no longer be able to obtain any roaming services at all due to the absence of any alternative providers of iDEN roaming.”⁴³ In SouthernLINC Wireless’s view, its proposed condition is narrowly tailored because it addresses only automatic roaming for iDEN services, and does not affect CDMA roaming.⁴⁴ The proposed condition is appropriate in the eyes of SouthernLINC Wireless because it takes the viewpoint that any assessment by the Commission “of whether a proposed merger is in the public interest – as required by Sections 214(a) and 310(d) of the Communications Act – must necessarily consider the transaction’s impact on the availability of automatic roaming services for consumers of mobile wireless services.”⁴⁵

14. The claims made by SouthernLINC in its filings have already been rejected by the Commission, and nothing in the current proposed transaction affects that determination. As noted above, the Commission treated Nextel Partners as being part of the merged entity for purposes of its review of

³⁷ SouthernLINC Wireless Petition at 2.

³⁸ *Id.* at 7.

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 13-14.

⁴¹ *Id.* at 14, citing *Sprint-Nextel Order*, 20 FCC Rcd at 14012 ¶ 126.

⁴² *Id.* at 14.

⁴³ *Id.* at 15.

⁴⁴ *Id.* at 15-16.

⁴⁵ *Id.* at 16.

the proposed merger of Sprint and Nextel.⁴⁶ Thus, the Commission's conclusion in the *Sprint-Nextel Order* that "the roaming issues raised by these parties do not raise substantial and material questions of fact regarding the merger before us"⁴⁷ necessarily contemplated the presence of Nextel Partners as part of the Sprint Nextel corporate/affiliate family. At that time, the Commission specifically observed that "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."⁴⁸ The Commission concluded that, "given the broad scope of the concerns raised – many of which seem to call for a reevaluation of the Commission's roaming rules and policies – they are more appropriately addressed in the context of a rulemaking proceeding,"⁴⁹ which has since commenced and is now ongoing.⁵⁰

15. Sprint Nextel and Nextel Partners correctly point out that the merger of the two applicants does not in fact change the number of potential roaming partners available to SouthernLINC Wireless in any given service area.⁵¹ There currently is no overlap in the 800 and 900 MHz iDEN authorizations held by Sprint Nextel and Nextel Partners.⁵² As a result, Sprint Nextel and Nextel Partners do not both operate iDEN systems in any particular market. Thus, both before and after the proposed transaction, SouthernLINC Wireless has access to the same number of potential iDEN roaming partners through all areas of the country. Like the Commission's finding in the *Sprint-Nextel Order*,⁵³ SouthernLINC Wireless's bargaining position vis-à-vis Sprint Nextel and Nextel Partners will remain unchanged by the proposed transfer of control. The harm alleged by SouthernLINC Wireless is not the result of the transaction under consideration in the Applications. Moreover, in the order approving the Cingular-AT&T Wireless transaction, the Commission based its analysis of roaming issues on "the potential harm to consumers of mobile telephone services, rather than to mobile telephony providers."⁵⁴ Since the proposed condition is not merger-specific and will not remedy any harm traceable to the proposed transaction, we decline to impose it. Rather, the concerns raised by SouthernLINC Wireless are more properly addressed in the Commission's pending roaming rulemaking proceeding,⁵⁵ where

⁴⁶ See discussion *supra* ¶ 11, citing *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 33. See also Sprint Nextel Opposition at 1, 3-4; Nextel Partners Opposition at 3.

⁴⁷ *Id.* at 14012 ¶ 126. The Commission's statement directly followed its discussion of the SouthernLINC Wireless arguments. *Id.* at 14012 ¶ 125.

⁴⁸ *Id.*

⁴⁹ *Id.* at 14013 ¶ 128.

⁵⁰ See In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047 (2005) ("Roaming Notice").

⁵¹ See Sprint Nextel Opposition at 4-5; Nextel Partners Opposition at 7.

⁵² See Sprint Nextel Opposition at 5; Nextel Partners Opposition at 7.

⁵³ See discussion *supra* ¶ 14, citing *Sprint-Nextel Order*, 20 FCC Rcd at 14012 ¶ 126.

⁵⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21588 ¶ 172.

⁵⁵ See generally *Roaming Notice*. See also Sprint Nextel Opposition at 3, 6-7; Nextel Partners Opposition at 2-3, 6-7.

SouthernLINC Wireless has raised its concerns and public interest arguments in support of changes to the Commission's rules and policies regarding wireless roaming.⁵⁶

IV. CONCLUSION

16. For the reasons stated above, we find that SouthernLINC Wireless has not demonstrated that the circumstances of this proposed transfer of control warrant adopting a condition that would oblige Applicants to provide requesting third party carriers automatic roaming for voice, digital dispatch, and data services at reasonable rates and on reasonable and nondiscriminatory terms and conditions. Moreover, we find that consent to the Applications will further the public interest, convenience, and necessity.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 310(d), and section 1.939(h) of the Commission's rules, 47 C.F.R. § 1.939(h), the Petition of SouthernLINC Wireless, filed March 29, 2006, is DENIED for the reasons stated herein.

18. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 310(d), the above-referenced applications for the transfer of control of licenses from Nextel Partners to Sprint Nextel are GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁶ See Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Nov. 28, 2005); Reply Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Jan. 26, 2006).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: In the Matter of Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, For Consent To Transfer Control of Licenses and Authorizations; File Nos. 0002444650 et al

I support today's item because I believe that the questions SouthernLINC raises about roaming agreements are not directly related to this merger and consequently should be dealt with in our ongoing, comprehensive roaming docket. But I do want to emphasize how important I think that rulemaking is. Wireless consumers benefit from full and fair competition among wireless carriers. It is critically important that carriers not use roaming negotiations as a way to stifle competition. I hope we can move quickly to address this issue.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: In the Matter of Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, For Consent To Transfer Control of Licenses and Authorizations; File Nos. 0002444650 et al

While I support this transfer of control, I am troubled by some of the specific allegations raised in the proceeding regarding the apparent reluctance of the merger parties to enter into reasonable and nondiscriminatory automatic roaming relationships. Consistent with my position in other recent merger proceedings, though, I believe that the discussion of roaming issues are most appropriate in the context of the comprehensive, industry-wide, proceeding that we launched in August 2005. I look forward to a timely resolution of this important inquiry.

Pending our next step in the roaming proceeding, however, I do think it is important to remind all CMRS providers that they are subject to certain common carrier provisions of Title II of the Act, in particular Sections 201 and 202. I remain supportive of our request for comment on whether existing remedies under these provisions of the law have been sufficient to ensure the continued development of automatic roaming services, particularly in light of recent industry consolidation.