

PUBLIC INTEREST STATEMENT**I. INTRODUCTION**

This application proposes the assignment of one 800 MHz and certain 900 MHz licenses from AWI Spectrum Co., LLC, an indirect, wholly-owned subsidiary of Arch Wireless, Inc. (collectively “Arch”) to ACI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively “Nextel”). In support of this application, Nextel respectfully submits this public interest statement evidencing that the proposed assignment will not result in any competitive harm and will advance the public interest by enhancing Nextel’s ability to expand its array of mobile wireless services and heighten competition within the Commercial Mobile Radio Services (“CMRS”) market.¹

The CMRS market may be likened to the automobile market where sellers differentiate their products through varying technologies and features, but all must compete for the same consumers’ dollars. The average car buyer does not need to know what technology is used to build his vehicle, although he may have a preference as between sedans and sport utility vehicles, rear-wheel drive and all-wheel drive, etc. Moreover, notwithstanding the buyer’s preferences, the seller of the rear-wheel drive sedan cannot ignore competition from the seller of the all-wheel drive sport utility vehicle, because both serve the buyer’s need for a vehicle to take him from point A to point B. Sellers are in constant competition both (a) to differentiate their products through innovation and (b) to adopt the successful product innovations of their

¹The proposed assignment also includes the Station WNAU450 800 MHz license (located in Portland, Maine) held by AWI Spectrum Co., LLC. Because this single license is incidental to the broader 900 MHz license acquisition, Nextel’s analysis in this Public Interest Statement focuses on Nextel’s proposed acquisition of Arch’s 900 MHz licenses.

competitors. A telling example of this industry-wide competition is the sports utility vehicle, initially built and sold primarily by manufacturers in the rugged 4-wheel drive segment of the market, but now offered by nearly all manufacturers, including those such as Lexus and Mercedes which typically are classified as sellers of luxury sedans. Economic survival forces each manufacturer to make constant, significant investments to retool its assembly plants and product line as necessary to satisfy consumers' evolving and growing demands.

History and recent experience in the CMRS marketplace demonstrate that wireless consumers over time may change the composition of the wireless services they use based upon the services offerings available to them. To remain competitive, each CMRS carrier must utilize technology innovations to differentiate its service through features such as Nextel's Direct Connect^(sm) feature or other carriers' free mobile-to-mobile offerings. The consumer ultimately makes his or her purchasing choice based on whether the CMRS carrier offers the menu of services, quality, and pricing that he or she desires, not on whether the spectrum on which the carrier initially was licensed comes from the Commission's cellular, Personal Communications Service (PCS) or SMR channel assignments. Whether it utilizes cellular, PCS or SMR spectrum, or any combination thereof, a carrier must offer not just mobile voice or just trunked dispatch service, but a menu of mobile telephone, group calling and advanced data capabilities in order to remain competitive in the CMRS market. Because consumers base their purchasing choices on the full array of services and pricing options offered by all CMRS carriers, competitive analysis of transactions involving companies providing these services likewise must focus, not on artificial spectrum classifications, but on competition in

the entire CMRS market.² As the Strategis Group, a “world leader” in telecommunications consulting, recently stated in its report on the state of SMR, “[d]ispatch communications is neither an industry nor a distinct technology. Rather, it is an application that can be provided by several different technologies.”³ Thus, dispatch services, such as Nextel’s Direct Connect, can be provided by any CMRS carrier, whether a cellular, PCS or an SMR licensee. As a result, consideration of the proposed transaction must be weighed according to its effect on that CMRS marketplace.

Nextel directly competes with all other CMRS providers, including Sprint PCS, AT&T Wireless, Cingular Wireless, VoiceStream and Verizon Wireless. Nextel’s offering of an integrated package of mobile telephone, dispatch, paging and wireless Internet services has stoked competition in the market, pushing other CMRS providers to offer consumers a comparable array of wireless services and pricing options. Nextel’s proposed acquisition of Arch’s 900 MHz licenses is a direct response to this vigorous competition, as Nextel seeks to achieve some of the economies of operation enjoyed by its spectrum-rich CMRS competitors. Nextel has, on average, only 20 MHz of spectrum available to it in major U.S. markets and Nextel is constrained in its ability to access all of this spectrum throughout its markets.⁴ Nextel’s limited spectrum holding stands in sharp contrast to the 25 MHz of clear

² Indeed, the FCC long ago eliminated prohibitions on the offering of dispatch services by CMRS providers. See *Use of Radio Dispatch Communications, Report and Order*, 10 F.C.C.R. 6280, ¶ 1 (1995) (“we eliminate our prohibition on the provision of dispatch service by providers of Commercial Mobile Radio Service . . . including cellular licensees . . . After reviewing the record, we find that these restrictions no longer serve the public interest and should be eliminated.”).

³ *The State of the SMR Industry: Nextel and Dispatch Communications*, The Strategis Group, September 2000, at 7 (“September 2000 Strategis Report”).

⁴ The 20 MHz average figure includes both Nextel’s 800 MHz and 900 MHz spectrum and counts spectrum that is not subject to Nextel’s exclusive control.

spectrum that its cellular competitors hold and which they can fully use and reuse throughout an entire market, not to mention the 30 MHz of contiguous, clear spectrum that PCS competitors hold in many markets.

Nextel's plan to acquire and revamp Arch's existing Designated Filing Area ("DFA") based analog systems and to construct Arch's 900 MHz MTA licenses to support and improve Nextel's offerings of integrated digital wireless services will put this spectrum to its highest and best use. Nextel is best positioned to use these licenses to benefit the public interest because it can integrate the 900 MHz spectrum with its existing 800 MHz and 900 MHz licenses to achieve efficiencies in the nationwide provision of mobile communications services. Upon its completion, Nextel will operate a fully-integrated 800/900 MHz nationwide iDEN network providing the most intensive and extensive use ever of 900 MHz spectrum to provide competitive CMRS services to the public. The proposed transfer of Arch's 900 MHz licenses to Nextel ultimately will fuel a virtuous cycle of competition as its CMRS competitors are forced to respond with additional product and pricing innovations – all to the benefit of the American consumer.

II. BACKGROUND

Arch, the assignor of the 900 MHz licenses discussed herein, is a leading provider of two-way Internet messaging and mobile information services, including paging services. Using spectrum that is not the subject of this application for assignment, Arch provides services in all 50 states, the District of Columbia and Canada. Arch operates paging facilities in more than 180 of the 200 most populated markets in the country, offering local, regional and nationwide paging services over digital networks that cover approximately 85 percent of the United States population. Arch offers four types of paging services – digital display,

alphanumeric display, tone-only and tone-plus voice, and two types of messaging services – two-way messaging and guaranteed messaging. Arch also offers enhanced complementary services such as stock quotes, news and other wireless information services, including voice mail, personalized greeting and message storage and retrieval.

The attached Exhibit 1 provides a listing of the major markets in which Arch currently holds 900 MHz licenses and a listing of all licensed CMRS carriers within these markets. All of these licensees are authorized by the Commission to provide both interconnected mobile telephone service and dispatch services to the public. Additionally, Exhibit 2 provides a listing of the top 50 MTAs in the U.S., the respective channel counts of Nextel and Arch in each, and notes whether Nextel or Arch are providing commercial services to the public in those markets.

Nextel currently provides CMRS service in some 400 cities in the U.S. and serves nearly seven million subscribers,⁵ as one of at least six CMRS providers with a national footprint.⁶ Nextel has invested more than \$7 billion dollars to establish a national digital network to provide a full range of wireless communications services in competition with other CMRS providers. Nextel's digital CMRS services represent a significant improvement over most other CMRS offerings because they integrate a digital dispatch service with interconnected mobile telephone service. The digital dispatch function (known as Nextel Direct Connect^(SM)) significantly enhances dispatch services as compared to traditional analog dispatch services, because it expands the typical dispatch service coverage area, uses the

⁵ See Press Release "Nextel Reports Record Second Quarter 2000 Results," released July 18, 2000.

⁶ 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, *Fifth Report*, 15 F.C.C.R. 17660, at pp. 9-10 (2000) ("Fifth Report on Competition").

spectrum more efficiently, provides extra security through the use of digital technology, and offers the user a number of options and features, including adding mobile telephone, paging, wireless Internet and the addition of voice mail to the basic dispatch functionality. Even standing alone, however, Nextel's Direct Connect^(SM) service offers more than simply trunked dispatch. According to the Commission, Direct Connect^(SM) "to some degree [] is a substitute for mobile voice features such as speed dialing and conference calling."⁷ Thus, by offering this integrated package of services, Nextel has become a significant competitor to the established CMRS carriers throughout the Nation and continues to compete successfully in the provision of mobile telephone services.⁸

III. DISCUSSION

Section 310(d) of the Communications Act requires the Commission to determine whether the proposed assignment of Arch's licenses to Nextel will serve the public interest.⁹

As explained in the Commission's Order approving Nextel's acquisition of 900 MHz licenses from Geotek Communications Inc., this public interest determination includes an assessment of the transaction's impact on competition.¹⁰ In this case, as in *Geotek*, the transfer of the

⁷ *Id.* at p. 70. For example, last month 1.7 million of Nextel's subscribers used their service exclusively to make dispatch calls. This demonstrates not only that Nextel's integrated service offerings are used flexibly by subscribers, but that the proposed assignment will not reduce, and will improve, the availability of dispatch services generally.

⁸ *Id.* at pp. 11, 30; see also 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, *Fourth Report*, 14 F.C.C.R. 10145, 10150 at fn. 18 (1999) ("Fourth Report on Competition").

⁹ 47 U.S.C. § 310(d).

¹⁰ *Geotek Communications Inc., Memorandum Opinion and Order*, 15 F.C.C.R. 790 at ¶ 8 (WTB 2000), *aff'd*, *Order on Reconsideration*, DA 01-51 (WTB, rel. Jan. 9, 2001) ("Geotek").

subject 900 MHz licenses to Nextel is “not likely to result in competitive harms, and would likely have pro-competitive effects.”¹¹

The Wireless Telecommunications Bureau (“the Bureau”) stated in *Geotek* that

“We are now more prepared to broaden our consideration of the competitive impact of market participants outside of the sharply delineated [mobile voice and trunked dispatch] wireless sectors we have used recently when evaluating proposed transfers and assignments. The convergence of these technologies leads us to believe that consumers may begin to use more of these wireless services interchangeably (and that carriers may increasingly market such services to the same set of consumers).”¹²

Vigorous competition is forcing every CMRS provider to develop a full range of wireless offerings, including mobile telephone, group calling and data capabilities. This service diversification is essential to satisfy consumers’ needs and to remain competitive in this evolving market. Consumers do not base their purchasing choices on the spectrum used by each carrier to provide these mobile services. Neither should the Commission base its competitive analysis on such artificial spectrum classifications. As discussed below, the extensive evidence of technology and service convergence establishes the CMRS market as the single appropriate product market for analysis of the competitive impact of Arch’s license assignments to Nextel.

Furthermore, as the Bureau recognized in *Geotek*,¹³ regardless of the market definition adopted, strong existing and potential competition in the provision of both mobile voice and trunked dispatch services ensures that Nextel’s acquisition of additional 900 MHz licenses will

¹¹ *Id.*, Order on Reconsideration at ¶ 8.

¹² *Id.*, 15 F.C.C.R. 790 at ¶ 27.

¹³ *Id.*

not cause competitive harm to consumers. The proposed transaction will enhance Nextel's competitive options by increasing Nextel's spectrum capacity in markets across the United States, improving the quality of its service and increasing its flexibility in building out a nationwide footprint. The addition of this 900 MHz spectrum moves Nextel toward more equal footing with its spectrum-rich CMRS competitors, thereby increasing competition that redounds to the benefit of all wireless consumers.

A. The Proposed Assignment Will Increase Competition in the Relevant Market for CMRS Services

Recent pronouncements from Congress, the Commission, industry analysts and CMRS carriers support the conclusion that the industry has converged toward a single, broad-based CMRS market. CMRS providers, whether originally classified as cellular, PCS or SMR, no longer can satisfy consumers by offering traditional mobile voice service or trunked dispatch service alone, but must compete with one another in the provision of an array of mobile communications services.¹⁴ Nextel's offering of integrated mobile voice/dispatch services triggered this wave of competition, and the assignment of Arch's 900 MHz licenses to Nextel will benefit all wireless consumers by fueling the growth of competition and the development of an expanding menu of services and options.

1. Congress and the Commission Have Recognized the Existence of a Single CMRS Product Market and the

¹⁴ Moreover, while the categorization reflects the spectrum band on which a carrier may have initiated service originally, many providers now hold licenses, for example, for both "cellular" and "PCS" spectrum and their customers have dual-band based phones capable of operating on either cellular or PCS frequencies. As a result of technology and marketplace dynamics, all CMRS carriers are developing integrated suites of mobile communications services that compete with one another for the communications business of people "on the go." From the customer's perspective, the fact that Nextel primarily operates using spectrum denominated as "SMR" and Sprint PCS, for example, operates primarily on spectrum denominated as "PCS" is irrelevant in choosing between their competing offerings.

Need to Promote Regulatory Parity Within CMRS.

The Commission previously concluded that all CMRS services are competitive or potentially competitive and are, therefore, part of a single product market.¹⁵ The Commission also has found that 900 MHz licenses “present[] significant opportunities for the development of certain types of wide-area mobile voice and data services that could compete with [CMRS] services.”¹⁶ Congress created the CMRS classification of mobile services in 1993 due to the convergence of numerous private and common carrier mobile services, such as cellular, 800 MHz SMR and 900 MHz SMR, that were fulfilling similar consumer needs through similar service offerings.¹⁷ As technologies improved and these services increasingly began to address the same consumer needs, Congress changed the law to ensure that all CMRS carriers would be subject to a common regulatory framework.¹⁸

¹⁵ See Third Report and Order, 9 F.C.C.R. 8009, at ¶¶ 37 *et seq.* (1994) (“Third R&O”); Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, 10 F.C.C.R. 3361, at ¶ 27 (“OneComm”); Order on the Assignment of Motorola Licenses, DA 95-890, at ¶ 17 (April 27, 1995) (“Motorola”). See Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, 9 F.C.C.R. 7988, 8009 at ¶¶ 37 *et seq.* (1994) (“Third R&O”); Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, Order, 10 F.C.C.R. 3361, at ¶ 27 (WTB 1995) (“OneComm”); Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc., 10 F.C.C.R. 7783, at ¶ 17 (WTB 1995) (“Motorola”). In the OneComm and Motorola decisions, in particular, the Bureau concluded that, based on the Third R&O, “800 MHz SMR [is viewed] as just one of many competitive services within the large CMRS marketplace.” OneComm at ¶ 27; Motorola at ¶ 17. In the OneComm and Motorola decisions, in particular, the Bureau concluded that, based on the Third R&O, “800 MHz SMR [is viewed] as just one of many competitive services within the large CMRS marketplace.” OneComm at ¶ 27; Motorola at ¶ 17.

¹⁶ Third R&O at ¶ 113.

¹⁷ *Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, 107 Stat. 312 (1993).

¹⁸ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 F.C.C.R. 1411, 1418, at ¶ 13 (1994).

In 1997, when the Bureau evaluated Nextel's proposed acquisition of Pittencrieff Communications, Inc.,¹⁹ nascent mobile competition from SMR providers such as Nextel had not developed sufficiently to provide cellular and PCS service providers an incentive to offer an array of products to compete against SMR providers' menu of mobile voice, paging and dispatch services. The Bureau in *Pittencrieff* thus found that, while cellular and PCS "entry into dispatch services is not inherently costly, challenging, or unduly time-consuming," and that the regulatory barriers to non-SMR carriers providing dispatch services had been removed in 1995, separate product markets for mobile voice and trunked dispatch services still existed at that time.²⁰ Looking forward to cellular and PCS carriers' future response to SMR competition, however, the Bureau noted that, "[w]hile carriers currently find it more profitable to devote their spectrum to uses other than voice dispatch, substantial growth in mobile communications service capacity, especially in urban centers, is likely to change the relative profitability of these other services and create incentives to allocate more spectrum to the provision of dispatch-type services."²¹

In *Geotek*, the Bureau found that "legitimate questions can be raised about the suitability of the market definitions we found appropriate in *Pittencrieff* three years ago [and w]e are now more prepared to broaden our consideration of the competitive impact of market participants outside of the sharply delineated wireless sectors we have used recently when

¹⁹ Applications of Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, for Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 13 F.C.C.R. 8935 (WTB 1997) ("Pittencrieff").

²⁰ *Id.* at ¶¶ 44, 54.

²¹ *Id.* at ¶ 54.

evaluating proposed transfers and assignments.”²² Because the Bureau found that the transfer of Geotek’s 900 MHz licenses to Nextel would be pro-competitive “regardless of the market definition adopted,” the Bureau evaluated the proposed transfer’s competitive effects under the two-market framework of *Pittencrieff* “for convenience,” while emphasizing that “the boundaries between various CMRS sectors are fluid.”²³

The Bureau explained that

“These changes result from the Commission’s general policy of allowing flexible use in the CMRS sector, and even more importantly, from the rapid evolution of technology and the wireless marketplace. For example, mobile data services are emerging and are becoming closely integrated with mobile voice and other offerings. Also, services offered by cellular and broadband PCS firms are increasingly competing with services offered by paging and messaging carriers.”²⁴

Observing CMRS providers’ movement toward offering similar menus of mobile voice, data, and group-calling functions, the Bureau found that

“[S]pectrum assets are exiting traditional dispatch in search of higher returns . . . Nextel plans to re-deploy Geotek spectrum to the provision of its bundled service offering. Southern and Mobex, two of the larger SMR operators, have themselves expressed a desire to obtain and use the spectrum to provide mobile voice/dispatch service akin to Nextel’s.”²⁵

Likewise, from the standpoint of other CMRS competitors, the Bureau stated

“We agree with [the Department of Justice’s] conclusion that a number of cellular and PCS firms appear to be positioning price and service plans to compete more closely with Nextel’s mobile voice service and Direct

²² *Geotek*, 15 F.C.C.R. 790, at ¶ 27.

²³ *Id.* at ¶¶ 27-28.

²⁴ *Id.* at ¶ 27.

²⁵ *Id.* at ¶ 43.

Connect^(R) feature.”²⁶

The Commission’s recent Fifth Report on Competition similarly chronicled the convergence of services as cellular and PCS licensees, spurred by competition from SMR providers’ integrated mobile voice/dispatch service packages, offer increasingly competitive calling plans intended to compete with the group functionality of dispatch services.²⁷

The Commission’s findings reflect the reality that all CMRS providers now compete directly with one another in a single, integrated CMRS market as they are forced to offer the full range of wireless functions to satisfy the mobile communications needs of consumers “on the go” in this rapidly evolving market.

2. Cellular, PCS and SMR Providers All Compete Directly With One Another in Single Integrated CMRS Market.

Industry analysts have noted the industry’s convergence toward a single CMRS market as cellular and PCS licensees have launched an array of service packages to compete with digital SMR carriers’ provision of integrated voice/dispatch services, spearheaded by Nextel:

- “You can’t compare the SMR market as an independent market anymore. . . . They are part of the PCS market nowadays. Their services are definitely not marketed toward the dispatch market exclusively anymore.”²⁸
- SMR integrated voice/dispatch service “awakened the sleeping giant of the cellular industry, which previously had never paid much attention to the dispatch market.”²⁹

²⁶ *Id.* at ¶ 36.

²⁷ Fifth Report on Competition at p. 71.

²⁸ Dan Meyer, “The Winds of Change: Southern Linc, Nextel Partners Define their Roles in Market”, Radio Comm. Rept., at p.16, Nov. 13, 2000 (quoting Elliot Hamilton, Senior Analyst, Strategis Group).

²⁹ Alan Tilles, “Is there still a place for plain old dispatch?”, Radio Comm. Rept., at p.42, Feb. 28, 2000.

- “In conversations with cellular carriers, there is a concern that they need to offer service to compete with Nextel. . . . Group calling ‘does represent the notion that Nextel has a differentiated service in an increasingly competitive market. These guys need to do something to lessen the differences in services . . . Group calling is only the first of several steps carriers will take to compete with Nextel.’”³⁰
- “Management indicated some of the competition is going after Nextel’s business market focus. For example, VoiceStream and Verizon Wireless are offering free unlimited mobile-to-mobile minutes. While we acknowledge these do not offer the same advantages as Nextel’s direct connect system, we believe this will give the ‘typical Nextel user’ more of a reason to pause when making a decision on which mobile device to purchase. This in turn lengthens the sales cycle significantly and may result in lower net additions and higher churn in the near term [for Nextel].”³¹
- “Many regional operators such as Bell Atlantic Mobile have been offering free or reduced rates for mobile-to-mobile calls in an effort to fight off intense competition for business users from Nextel, which is targeting work groups with its integrated cellular and dispatch service.”³²
- “Noel Salmi, director of corporate communications with AT&T Wireless, said the company’s group calling plan targets much of the same market segments Nextel is going after, but the advantage is that customers can call five landline numbers for free.”³³
- “Some cellular operators are offering creative billing plans, including discount prices for mobile-to-mobile minutes, and bundled service packages that include large amounts of airtime Other carriers believe they can create *de facto* dispatch systems by combining speed dialing and conferencing features over intelligent networks.”³⁴ These “dispatch calling plans will grow rapidly in the next five years.”³⁵

³⁰ Lynnette Luna, Group Calling is Weapon in Wireless Wars, Radio Comm. Rept., at p. 20, June 28, 1999 (quoting Steven Virostek, Vice President, Strategis Group in Washington D.C.) (“Wireless Wars”).

³¹ See First Union Securities Covers NXTL, First Union Securities, Nov. 11, 2000 <http://www.cnetinvestor.com/yahoonews/newsitem-yahoo.asp?SYMBOL=R657350>).

³² Wireless Wars at p.20.

³³ *Id.*

³⁴ US Dispatch Markets, The Strategis Group, January 2000, at p.75 (“January 2000 Strategis Report”).

³⁵ *Id.* at p.82.

As the Bureau has recognized, Nextel started the revolution with its “bundled offering of mobile voice and the Direct Connect^(sm) service option [that] straddle[s] the two *Pittencrieff* markets,”³⁶ and its CMRS competitors have been forced to follow with the full menu of services to satisfy the range of wireless consumers’ needs. Industry analysts – and more importantly CMRS carriers themselves – recognize that, to be competitive, a carrier must offer not just mobile voice or just trunked dispatch service, but a package of voice, group calling and data capabilities, and soon Third Generation (3G) wireless functionalities. Nextel is offering its Direct Connect^(SM) function not as a stand-alone dispatch service offering, but as part of its integrated service package to provide “a differentiated service in an increasingly competitive [CMRS] market.”³⁷

The attached Exhibit 3 lists some of the innovative calling plans developed by cellular and PCS competitors to respond to Nextel’s and other CMRS providers’ integrated service packages in the CMRS marketplace. In addition, in September 1999, under the Cellular One brand name, SBC launched *Cellular One to One*, a service employing Ericsson technology to enable subscribers to make conference calls with up to 30 different parties.³⁸ As the Bureau explained, “Ericsson’s TDMA Pro product overlays dispatch capabilities onto existing mobile voice networks by programming the network’s servers and handsets.”³⁹ Moreover, OmniExpress, a joint venture between Qualcomm and Descartes Systems Group, now offers a new QChat product that also provides mobile push-to-talk one-to-many dispatch functionality

³⁶ *Geotek* at ¶ 27.

³⁷ *Wireless Wars* at p.20.

³⁸ *Id.*; *Geotek*, at ¶ 37.

over cellular and PCS networks.⁴⁰ Qchat is the button located on the side of Qualcomm phones that will connect one user to all of the other users in a particular calling group.⁴¹ In July 1999, Sprint PCS purchased OmniExpress for \$400 million.⁴²

In short, the Commission's review, industry analysts' studies, carriers' business plans, and consumer response all establish the death of artificial boundaries between mobile voice and trunked dispatch services and the birth of a single integrated CMRS market in which cellular, PCS and SMR providers all must compete for the same consumers' dollars by providing an array of mobile communications services to satisfy the needs of people "on the go." Convergence toward a single CMRS market will only accelerate as technology evolves and service providers are forced to compete even more intensely for customers. Consequently, the only relevant market for analysis of mergers and acquisitions of companies providing these services is the CMRS market. Analysis of the competitive impact of Nextel's acquisition of Arch's 900 MHz licenses on the CMRS market leads to the inescapable conclusion that the proposed assignment will fuel competition and innovation in the market to the benefit of all wireless consumers.

3. The Assignment of Arch's 900 MHz Licenses to Nextel Will Increase Competition in the CMRS Market.

³⁹ *Id.*

⁴⁰ See Press Release, Qualcomm, "Solution by Descartes and Qualcomm Improves Communications and Smooths Logistics for Private Fleets, Less-than-Truckload Carriers and Metropolitan Fleets" (June 15, 2000), www.qualcomm.com.

⁴¹ See, Press Release, Qualcomm, "Secure Wireless Handsets for Civilian Use" (January 2001), www.qualcomm.com.

⁴² See, Press Release, Qualcomm, "Sprint Signs Agreement Valued at Approximately \$400 Million with Qualcomm for the Purchase of CDMA Digital Handsets" (July 20, 1999), www.qualcomm.com.

The transfer of Arch's 900 MHz licenses to Nextel will provide needed fuel for the growth of digital wireless services, 3G mobile innovations and accelerated competition in the CMRS market. The Commission's November 27, 2000 Secondary Markets Notice of Proposed Rulemaking emphasized the Commission's goal of achieving "[m]ore intensive use of spectrum that is already licensed but is underutilized or inefficiently utilized"⁴³ The proposed assignment of 900 MHz licenses from Arch to Nextel would enhance the efficient use of this spectrum and offer consumers a wider array of mobile communications services.

⁴⁴ As the Bureau recognized in *Geotek*, this spectrum is "well suited, given current technology, to the provision of paging, dispatch, mobile voice, mobile data, or combinations of these services. . . ."⁴⁵ – precisely the services Nextel offers on its iDEN network.

Nextel has engaged in a number of transactions to acquire spectrum licenses over the past ten years. Despite the complaints of competitors, each and every one of these transactions has led to increased consumer benefits. Nextel has taken underutilized spectrum, invested significantly in technology and increased the number of subscribers supported on the spectrum by an order of magnitude. Consumer harm would come from a *decrease* in service, but the evidence from Nextel's growing subscriber base, now numbering nearly seven million, shows that Nextel has no ability or incentive to decrease service offerings. To the contrary, Nextel's innovations maximized public interest benefits from this spectrum. The same

⁴³ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, FCC 00-402, at ¶ 8 (rel. Nov. 27, 2000).

⁴⁴ Arch has not yet constructed its 900 MHz MTA licenses, and thus there is no substantial customer base that will be disrupted by the proposed transaction.

⁴⁵ *Geotek* at ¶ 25.

increase in usage is sure to result from Nextel's stewardship of the Arch licenses. Nextel is acquiring Arch's 900 MHz spectrum to support its integration into a dual-band 800/900 MHz iDEN product that will enable competition-enhancing cost savings, increased customer capacity, enhanced system robustness, improved coverage, accelerated introduction of 3G services, and additional flexibility to mitigate and/or prevent interference with certain adjacent-channel 800 MHz public safety communications systems. Nextel is increasing its spectrum capacity and putting the spectrum to much more efficient use – a significant public interest benefit. As capacity availability and spectrum reuse capabilities increase, downward pressure on consumer prices and increased development of service options will continue industry-wide.

The Bureau has recognized that Nextel's deployment of efficient digital technologies provides a direct public interest benefit.⁴⁶ As discussed above, Nextel's offering of integrated mobile voice/dispatch services has invigorated competition among CMRS providers and led to the offering of an array of innovative service and pricing options. The Bureau has noted Nextel's pro-competitive pricing efforts to date, including "Nextel's early introduction of per-second billing, and its elimination of roaming and long distance charges."⁴⁷ In discussing the pro-competitive effects of transferring additional 900 MHz licenses to Nextel, the Bureau further observed that Nextel likely can provide greater competitive benefits than other

⁴⁶ Pittencrieff at ¶ 65.

⁴⁷ Geotek at ¶ 47.

prospective buyers of these licenses because Nextel is one of a limited number of firms that can provide nationwide service over its own network.⁴⁸

The addition of this 900 MHz spectrum to Nextel's network still leaves Nextel well short of the amount of spectrum held by its chief CMRS competitors, who typically have at least 25-30 MHz (with some controlling spectrum up to the 45 MHz spectrum cap and 55 MHz spectrum cap in rural areas). The acquisition of Arch's 900 MHz licenses will move Nextel closer towards achieving some of the operational economies enjoyed by competitors such as Verizon, Sprint PCS, Cingular Wireless, VoiceStream and AT&T Wireless, but still place Nextel at a maximum average of only 20 MHz in any market and less in most. The Commission's approval of the proposed assignment thus will increase competition in the CMRS market to the benefit of all wireless consumers and advance the public convenience, interest, and necessity by accelerating the development of both technical and pricing innovations in this rapidly-evolving market.

⁴⁸ *Id.* at ¶ 46.

B. Analysis of a “Separate” Trunked Dispatch Service Market Still Leads to the Conclusion that the Proposed Assignment Will Cause No Harm to Competition.

Even under a two-market framework of analysis, evaluation of the proposed transaction still leads to the conclusion that the assignment of Arch’s 900 MHz licenses to Nextel is not likely to cause any competitive harm. As both the Commission and the Department of Justice (DOJ) have recognized, there are numerous opportunities for additional competition in the provision of trunked dispatch services – whether they be provided on 800 MHz, 900 MHz, 220 MHz, 700 MHz or 1.9 GHz channels.

In proceedings before the United States District Court for the District of Columbia in 1999, the DOJ stated that it had become “apparent . . . that concentration in the relevant [trunked dispatch] markets is likely to be mitigated by other significant entry. Although the [DOJ] cannot predict with precision when this entry will occur, its likely advent within the next couple of years” justified modifying the Consent Decree that then governed Nextel’s 900 MHz holdings to permit Nextel to acquire additional 900 MHz channels in major markets throughout the Nation.⁴⁹ The DOJ observed that, in the wake of the Commission’s elimination of regulatory restrictions on cellular and PCS providers’ ability to offer dispatch services, equipment vendors are researching and developing technologies that would add the dispatch

⁴⁹ Response of the United States To Public Comments On The Proposed Modified Consent Decree, filed August 27, 1999, *United States v. Motorola, Inc.*, Case No. 1:94CV02331, United States District Court for the District of Columbia (hereinafter the “DOJ Brief”). In 1995, Nextel entered into a Consent Decree with DOJ which limited the combined 900 MHz channel holdings of Nextel and Motorola in fifteen major markets. See *United States v. Motorola, Inc.*, Case No. 1:94CV02331, 1995 WL 866794 (D.D.C. 1995). In the proceeding to modify the Consent Decree, which was approved by the Court on December 16, 1999, Nextel and Motorola were permitted to increase their combined holdings in these 15 markets to as much as 108 channels per market, and the Consent Decree was set to expire on October 30, 2000. See *United States v. Motorola, Inc.*, Case No. CVI: 94-02331, 1999 WL 1581522 (D.D.C. 1999).

function to existing cellular and PCS systems.⁵⁰ As noted above, Qualcomm's development of its QChat product to provide dispatch capability over cellular and PCS systems is one example of such equipment vendors' efforts.⁵¹ The DOJ's observations regarding the lack of any regulatory or technical constraints on cellular and PCS providers' offering of trunked dispatch services echoed the Bureau's finding that their "entry into dispatch services is not inherently costly, technically challenging, or unduly time-consuming."⁵²

Furthermore, as the Bureau and DOJ also have recognized and as discussed above, in the interim, cellular and PCS providers have developed group calling plans designed to compete directly with Nextel's Direct Connect^(SM) functionality.⁵³ Whether or not these providers currently are providing traditional dispatch services, the fact that they are providing competitive services that the public considers as a functional equivalent is a key public interest consideration that should be recognized by the Bureau in its Section 310(d) analysis.

In *Geotek*, the Bureau pointed to the Commission's numerous regulatory and policy initiatives to reject arguments that "alternative sources of capacity suitable for dispatch use [would] be insufficient to meet projected growth in market demand."⁵⁴ The Bureau noted that cellular and PCS providers' development of "group-calling services are just what should be

⁵⁰ DOJ Brief at pp. 8-9, 11. See also September 2000 Strategis Report at p. 8 ("Dispatch services offered by cellular and PCS operators are likely to prove attractive to growing companies with dispatch communications needs particularly in urban markets.")

⁵¹ See www.qualcomm.com.

⁵² *Pittencrieff* at ¶ 54.

⁵³ See, e.g., *Geotek* at ¶ 36; DOJ Brief at p. 10.

⁵⁴ *Geotek* at ¶ 41.

expected from a policy allowing flexible use of spectrum licenses.”⁵⁵ As the DOJ further has recognized, the Commission’s auction of 220 MHz spectrum offers licensees an opportunity to begin implementing dispatch and other competitive services such as data services that are designed to communicate with a fleet of vehicles and permit real-time interaction.⁵⁶ The Commission also has adopted its "refarming" initiative in bands below 800 MHz, which provides for utilization of additional narrowband channels, as well as more effective utilization of existing channels through service pool consolidation,⁵⁷ thus encouraging the implementation of dispatch services.

In addition to these opportunities for carriers to enter the CMRS market and provide dispatch services, previously recognized by the DOJ and the Bureau, the Commission recently licensed more spectrum that could well be used to provide trunked dispatch services – the 700 MHz Guard Band licenses.⁵⁸ Although Nextel was the high bidder on a number of the 700 MHz Guard Band licenses, Nextel’s role is that of the “Band Manager,” leaving the introduction and deployment of services to a number of Guard Band spectrum lessees.⁵⁹ Moreover, the 700 MHz spectrum to be made available on a lease basis, likely

⁵⁵ *Id.*, at ¶ 38.

⁵⁶ DOJ Brief at pp.11-12; Phase II 220 MHz Service Spectrum Auction Closes; Winning Bidders in the Auction of 225 Licenses in the Phase II 220 MHz Service, *Public Notice*, DA 99-1287 (rel.) July 1, 1999.

⁵⁷ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 F.C.C.R. 10076 (1995); *Memorandum Opinion and Order*, 11 F.C.C.R. 17676 (1996); *Second Report and Order*, 12 F.C.C.R. 14307 (1997).

⁵⁸ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 F.C.C.R. 5299 (2000) (“Guard Band Order”).

⁵⁹ The Guard Band Order requires that Nextel, as a Guard Band licensee, lease at least 50.1% of its licensed spectrum to non-affiliates. Guard Band Order at ¶ 59. We note that another significant 700 MHz

will be used for trunked dispatch services because the Commission has explicitly prohibited the introduction of cellular-like technology and architecture on these particular channels.⁶⁰ Thus, the auction of 700 MHz Guard Band licenses added yet another mechanism for interested parties to provide trunked dispatch services.

Finally, industry analysts The Strategis Group found in its January 2000 report on dispatch service developments that, “[f]or dispatch applications, wireless data is increasingly becoming a viable alternative to voice communications.”⁶¹ The report explained that “mobile data service providers are offering increasingly sophisticated fleet management, automated scheduling, and dispatch communications capabilities” and, as a result, “[s]ome radio users have reportedly selected commercial wireless data services for their dispatch communications needs”⁶² The development of this new class of competitors to trunked dispatch services highlights the potential for technical and business innovations to introduce new entrants into the market. It also provides another source of protection for customers that value dispatch service highly.

As the Bureau recognized in *Geotek*, intense competition for the provision of dispatch services presents Nextel with one fundamental reality: If Nextel or any other provider seeks to impose supra-competitive pricing or terms on consumers, “other firms will enter that niche

Guard Band license winner was Access Systems – an affiliate of ITA, the industry association and frequency coordinator for private dispatch systems used by businesses – which is likely to promote this spectrum for dispatch use.

⁶⁰ See *id.* at ¶¶ 19-24.

⁶¹ January 2000 Strategis Report at p. 85.

⁶² *Id.*

to compete away excess profits.”⁶³ In fact, the provision of service in the dispatch segment of the CMRS market is very robust. Although there have been few new entrants offering dispatch services this is because of “[d]eclining real prices suggest[ing] that dispatch market capacity has been outpacing demand” and the recognition that, as the Bureau stated in *Geotek*, “[there is] no reason to believe that these trends are poised for significant change.”⁶⁴ As further evidence that dispatch supply far outpaces demand, the Bureau found that “spectrum assets are exiting traditional dispatch in search of higher returns.”⁶⁵ The market evidence illustrates the competitiveness of the CMRS market overall and the dispatch segment in particular as spectrum is used to provide the highest value to consumers.

The Commission’s recent Fifth Report on Competition found that providers of trunked dispatch services “face considerable competitive pressures because their customers possess numerous competitive options.”⁶⁶ Among those options are traditional non-trunked dispatch services, private internal communications systems and mobile telephone services.⁶⁷ The Commission also noted that in 1999, there was growth in analog dispatch services in the 450

⁶³ *Geotek* at ¶ 38. In fact, the intense competition among wireless carriers at the close of 2000 evidences the inability of Nextel or any other provider to impose supra-competitive pricing and terms. See Fifth Report on Competition at p. 4.

⁶⁴ *Geotek* at ¶ 41 (“while dispatch demand has grown, dispatch supply appears to have been growing even more rapidly.”).

⁶⁵ *Id.* at ¶ 43.

⁶⁶ Fifth Report on Competition at p. 70.

⁶⁷ *Id.*

MHz and 220 MHz allocations.⁶⁸ Thus, to the extent consumers demand analog dispatch services, there are a number of licensees positioned to meet that demand.⁶⁹

In rural areas in particular, the Bureau has recognized that there is significantly less demand for dispatch services than in urban areas.⁷⁰ In many cases, therefore, dispatch service providers use their capacity not only for dispatch services but also for interconnected mobile telephone services. All CMRS licensees, regardless of their spectrum classification, typically have excess capacity in these less-populated areas, and all have the ability and opportunity to provide dispatch services. Consequently, there is significant opportunity for additional market entry. Most important, Nextel's acquisition of Arch's 900 MHz spectrum does not eliminate any current dispatch alternative in these areas, because Arch has yet to build out its 900 MHz MTA systems.⁷¹ As a result, just as the Bureau concluded in *Geotek*, consumers in rural areas will have "the same access to alternative services and service providers in these markets as they currently have" and, indeed, will get additional choices following Nextel's deployment of a full range of digital wireless services over this 900 MHz spectrum.⁷²

In the *Geotek* Order, the Bureau concluded that

⁶⁸ *Id.* at p. 71. See September 2000 Strategis Report at 31-32. Champion Communications Services "operates 450-512 Networks in Houston, Dallas/Fort Worth, Washington/Baltimore, Chicago and San Francisco. . . SMR Advisory Group has constructed approximately 500 [220 MHz] channels in 16 states. . . and serves more than 2,200 subscribers. . ."

⁶⁹ See e.g. Exhibit 1.

⁷⁰ *Pittencrieff* at ¶ 73.

⁷¹ While Arch has limited existing operations in several DFA urban markets, it has not constructed any 900 MHz MTA networks.

⁷² *Geotek* at ¶ 23.

[E]ntry can be relied upon to prevent competitive harm in [the trunked dispatch market] because barriers to entry are low, and numerous firms with qualifications and abilities to enter exist. In particular, we find that cellular and broadband PCS firms will have the ability to enter easily because they hold spectrum licenses, have relevant physical assets in place, have expertise in wireless technologies and markets, are ongoing businesses with recognizable brand names, and have ample capital resources. In addition, certain 220 MHz licensees have some of these attributes, and we find they are likely entrants as well.⁷³

To this list of entrants we now can add competitors in the 700 MHz Guard Band and wireless data service providers, with the potential for still more new entrants as technology continues to evolve. The Bureau, on January 9, 2001, affirmed on reconsideration the foregoing findings in the *Geotek* proceeding of ample actual and potential competition in the provision of dispatch services.⁷⁴ There has been no intervening market development to support a contrary finding in this case. Analysis of even a “separate trunked dispatch market” thus still leads to the conclusion that the assignment of Arch’s 900 MHz licenses to Nextel is not likely to result in any competitive harms to consumers.

⁷³ *Id.* at ¶ 35.

⁷⁴ *Id.*

C. Analysis of a “Separate” Mobile Voice Service Market Still Leads to the Conclusion that the Proposed Assignment Will Increase Competition.

There can be no dispute that the proposed assignment of Arch’s 900 MHz licenses to Nextel will increase competition in the provision of mobile voice services. Arch currently does not use its 900 MHz licenses to provide interconnected mobile telephone service. Consequently, Nextel’s acquisition of Arch’s licenses will not result in the elimination of a competitor in the provision of mobile voice services. Rather, Nextel’s use of Arch’s 900 MHz spectrum to expand the capacity of its efficient, high-quality digital network and meet consumer demand for a broadening array of voice and data services will enhance competition greatly.

Nextel has demonstrated that its presence in the CMRS marketplace has helped transform the pricing and billing of interconnected mobile telephone services, provided advanced dispatch services in the CMRS market, fostered the increasing competitiveness of the CMRS marketplace, and assisted in “bringing the benefits of mobility to an ever-increasing segment of the country.”⁷⁵ As the Commission recently stated, “the operator most responsible for using digital technology to make SMR a mobile telephone competitor has been Nextel.”⁷⁶

Competition among Nextel and other CMRS licensees, according to the Commission, has fueled a consumer movement to digital technologies,⁷⁷ increased overall mobile telephone

⁷⁵ Fourth Report on Competition at p. 5.

⁷⁶ Fifth Report on Competition at p. 30.

⁷⁷ *Id.* at pp. 13-14.

subscriber⁷⁸, and initiated a continued downward trend in prices.⁷⁹ This decrease in prices, moreover, appears to have resulted in overall increased usage by subscribers.⁸⁰

Mobile voice service is, of course, already the poster-child for competition in the telecommunications industry.⁸¹ The Commission has significantly increased opportunities for companies to provide commercial interconnected mobile services to the public, and, as a result, mobile telephone subscribership continues to grow at a rapid pace. The Cellular Telecommunications and Internet Association (CTIA) has reported that total mobile telephone subscribership reached over 97 million as of June 2000.⁸² By auctioning the A, B, C, D, E and F blocks in the PCS service, the Commission created up to six new wireless competitors in mobile telephone service. Many PCS providers already have deployed systems in a number of markets throughout the country, including all of the major markets on which the Nextel-Arch transaction would have an impact. As of 2000, 88% of the U.S. population had at least three mobile telephone providers offering service within their geographic market; 69% had a choice of at least five providers; and four percent of the population could choose among seven different providers.⁸³

It is this competitive reality that is driving Nextel's proposed acquisition of Arch's 900 MHz licenses, both as a means to introduce more competitive services and to respond to the

⁷⁸ *Id.* at p. 9.

⁷⁹ *Id.* at pp. 18-20.

⁸⁰ *Id.* at p. 23.

⁸¹ *See id.*

⁸² The CTIA's most recent Semi-Annual Wireless Industry Survey tabulating total subscribership as of June 2000 is available at www.wow-com.com/statsurv/survey/wireless.cfm.

⁸³ Fifth Report on Competition at pp. 6, 18, 77.

initiatives of competitors. Upon its completion, Nextel will operate a fully-integrated 800/900 MHz nationwide iDEN network providing the most intensive and extensive use ever of 900 MHz spectrum to provide competitive CMRS services to the public. Consequently, as the Bureau found in *Geotek*, assigning additional 900 MHz spectrum to Nextel “should promote public interest benefits by introducing new capacity, which in turn will allow possible price decreases, output increases, or a combination of these effects.”⁸⁴ As the Bureau also has recognized, the assignment of additional 900 MHz licenses to Nextel will benefit the public by moving Nextel closer to realizing the same cost and operational economies enjoyed by its chief CMRS competitors currently operating on up to 45 MHz of spectrum. These economies, moreover, will be provided while ensuring that Nextel’s spectrum position remains far below the 45 MHz permitted by the CMRS spectrum cap.⁸⁵ The increased spectrum capacity provided by Arch’s 900 MHz licenses will strengthen Nextel as a CMRS competitor in the provision of mobile voice services, thereby fueling competition in the CMRS market.

IV. CONCLUSION

The assignment of Arch’s 900 MHz licenses to Nextel is not likely to result in any competitive harm, given the strong actual and potential competition – recognized by the Commission -- to provide CMRS services, including mobile voice and dispatch-like services.

Rather, the proposed assignment likely will benefit the public by fueling competition and innovation among CMRS providers.

⁸⁴ *Geotek* at ¶ 48.

⁸⁵ *Id.* Additionally, the acquisition of Arch’s 900 MHz SMR licenses in these urban markets is not affected by Nextel’s 1995 Consent Decree with the DOJ, which expired in October 2000. See *United States v. Motorola, Inc.*, Case No. CVI: 94-02331, 1999 WL 1581522 (D.D.C. 1999).

Nextel will put the subject spectrum to its most efficient use through digital conversion to provide broader choice in enhanced telecommunications features, increased capacity for CMRS services and better security. Nextel's conversion of Arch's spectrum thus will not reduce consumer access to dispatch services, but will expand total transmission capacity and allow consumers to choose which wireless services they wish to receive. The acquisition of Arch's licenses will enhance Nextel's ability to achieve, in some measure, the operational economies already enjoyed by its spectrum-rich CMRS competitors and strengthen Nextel as a competitor against these carriers. As demonstrated by Nextel's history of product innovation and price competition, oft recognized by the Commission, Nextel's use of this additional spectrum capacity to improve its service offerings will fuel a virtuous cycle of competition among CMRS providers to offer more innovative service and pricing options for consumers nationwide.

Accordingly, Nextel respectfully asks that the Commission approve the assignment of Arch's 900 MHz licenses to Nextel as soon as possible in order to expedite the delivery of this transaction's significant public interest benefits to the American consumer.