

PUBLIC INTEREST STATEMENT

I. INTRODUCTION

This application proposes the assignment of 800 MHz and 900 MHz licenses from Chadmoore Wireless Group, Inc. (“Chadmoore”) to the wholly owned subsidiaries of Nextel Communications, Inc. (collectively “Nextel”) that are listed in the relevant assignment applications.¹ In support of this application, Nextel respectfully submits this public interest statement evidencing that the proposed assignments will not result in any competitive harm. On the contrary, the assignments 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 – a marketplace that is increasingly converging as the Wireless Telecommunications Bureau (“Bureau”) recently recognized.²

This public interest statement demonstrates that the assignments will benefit the public without competitive harm whether the Bureau uses a CMRS market definition or analyzes the transaction in separate dispatch and interconnected mobile voice telephony markets. Because of the significant degree of competition for all of these services, there is no chance for Nextel to act

¹ The proposed transaction involves primarily the assignment of approximately eight hundred and thirty-five 800 MHz SMR licenses, although there are sixteen 900 MHz MTA licenses to be assigned pursuant to the parties’ agreement.

² See Motorola, Inc., Motorola SMR, Inc. and Motorola Communications and Electronics, Inc., Assignors and FCI, 900, Inc., Assignee, For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, DA 01-947, released April 17, 2001 (hereinafter “*Motorola*”) at para. 12 (“[w]e also recognize the increasing convergence of CMRS services and may well adopt a broader market definition in reviewing future transactions.”); see also AWI Spectrum Co., LLC, Assignor and ACI 900, Inc., Assignee For Consent to Assignment of Specialized Mobile Radio Licenses, DA 01-1268, rel. May 25, 2001 (“*Arch*”) at ¶ 11 (“We recognize that these product markets continue to evolve so that the dividing lines between are becoming less clear.”)

anticompetitively and harm consumers. To the contrary, Nextel's path of spectrum acquisition has allowed it to increase capacity, lower prices, and provide innovative services.

Within the CMRS marketplace, Nextel has helped transform the pricing and billing of interconnected mobile telephone services,³ 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."⁴ Additionally the Commission as stated that "the operator most responsible for using digital technology to make SMR a mobile telephone competitor has been Nextel."⁵ Within the separate trunked dispatch service market, Nextel is but one of several providers of dispatch services, and as the Commission recently found, would have no ability to increase prices even in this narrowly defined relevant market.⁶

Nextel has, on average, only 20 MHz of 800 and 900 MHz 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.⁷ Nextel's limited spectrum holding stands in sharp contrast to the 25 MHz of clear spectrum that its cellular competitors hold and which they can fully use and reuse throughout an entire market, not to mention the 30 MHz or more of contiguous, clear spectrum that PCS

³ See, e.g., September 2000 Strategis Report at p. 54 ("The Strategis Group believes that Nextel's subscriber growth rates have evoked a profound response from AT&T Wireless and other cellular operators.")

⁴ Fourth Report on Competition at p. 5.

⁵ Fifth Report on Competition at p. 30.

⁶ See, e.g., Geotek Communications Inc., *Memorandum Opinion and Order*, 15 F.C.C.R. 790 at ¶ 38 (WTB 2000), *aff'd*, *Order on Reconsideration*, DA 01-51 (WTB, rel. Jan. 9, 2001) ("Geotek").

⁷ 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.

competitors hold in many markets. Therefore, Nextel's plan to acquire and revamp Chadmoore's licenses to support and improve Nextel's offerings of integrated digital wireless services will put this spectrum to its highest and best use as an effective and innovative competitor in the CMRS marketplace. Nextel is best positioned to use these licenses to benefit the public interest because it can integrate them immediately into its digital mobile network to achieve efficiencies in the nationwide provision of mobile communications services. The proposed assignment of Chadmoore's 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

Chadmoore, the assignor of the 800 and 900 MHz licenses discussed herein, is a provider of traditional analog dispatch services in numerous areas throughout the country. Today, nearly all of those users are businesses that use radios with access only to non-interconnected dispatch services. A very small percentage of Chadmoore's approximately 35,000 customers have access to limited interconnect capabilities.

Nextel currently provides CMRS service in some 400 cities in the U.S. and serves over seven million subscribers,⁸ as one of at least six CMRS providers with a national footprint.⁹ 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

⁸ See Press Release "Nextel Reports First Quarter 2001 Results," released May 1, 2001.

⁹ 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").

CMRS service integrates in a single mobile handset a digital dispatch service (known as Nextel Direct Connect^(sm)) with interconnected mobile telephone service, short messaging and mobile data service.¹⁰ Even standing alone, Nextel's Direct Connect service offers more than simply trunked dispatch. According to the Commission, Direct Connect "to some degree [] is a substitute for mobile voice features such as speed dialing and conference calling."¹¹ 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 CMRS services.¹²

The attached Exhibit 1 provides a list of the 150 MSAs within which Chadmoore currently holds 800 or 900 MHz licenses, and a listing of all cellular, Personal Communications Services ("PCS"), 800 and 900 MHz, 220 MHz, 450 MHz and 217-219 MHz licensees in those markets.¹³

All of the licensees listed in Exhibit 1 are authorized by the Commission to provide interconnected mobile telephone service and/or dispatch services. Each of these licensees, therefore, provides actual or potential competition to Nextel and Chadmoore in those geographic areas. Exhibit 2 provides a

¹⁰ Nextel's Direct Connect is a significant advancement over traditional analog dispatch services because it expands the typical dispatch service coverage area, uses the spectrum more efficiently, provides extra security through the use of digital technology, and offers the user a number of options and features, including mobile telephone, paging, wireless Internet and voice mail.

¹¹ Fifth Report on Competition at p. 70.

¹² *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").

¹³ These 150 MSAs represent every MSA where Chadmoore holds channels within 25 miles of the core of the MSA.

listing of the 150 impacted MSAs and the respective channel counts of Nextel and Chadmoore in each MSA.

III. DISCUSSION

Section 310(d) of the Communications Act requires the Commission to determine whether the proposed assignment of Chadmoore's licenses to Nextel will serve the public interest, convenience and necessity.¹⁴ As explained in the Bureau's recent Order approving Nextel's acquisition of Motorola's 900 MHz licenses, this public interest determination includes an assessment of the transaction's impact on competition.¹⁵ In this case, as in *Motorola*, the assignment of the subject licenses will put the spectrum to more efficient use by integrating it into Nextel's iDEN system, will enhance Nextel's ability to compete in the CMRS marketplace, and is not, therefore, "likely to cause competitive harm. . . and is likely to produce some public interest benefits."¹⁶

A. The CMRS Marketplace Is the Relevant Market for the Bureau's Public Interest Analysis

In analyzing these potential pro-competitive impacts, the Bureau should rely on its previous findings that wireless voice services have converged into a single CMRS marketplace within which Nextel's services aggressively compete. For example, 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

¹⁴ 47 U.S.C. § 310(d).

¹⁵ *Motorola* at ¶ 9; *see also Arch* at ¶ 9; *Geotek* at ¶ 8.

¹⁶ *Motorola* at ¶ 38; *see also Arch* at ¶ 16.

interchangeably (and that carriers may increasingly market such services to the same set of consumers).”¹⁷

Vigorous competition is driving this convergence by forcing every CMRS provider to develop a full range of wireless offerings, including mobile telephone, group calling and data capabilities. Whether a carrier utilizes cellular, PCS or SMR spectrum, or any combination thereof,¹⁸ a wireless 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.

As Chairman Powell stated just last week, “[e]verything [the Commission does] is about consumers.”¹⁹ This “cardinal rule,” as the Chairman described it, should be used in analyzing transactions, such as this one, that will promote consumer welfare by enhancing competition, spectrum efficiency and product and service innovation. Consumers base their purchasing decisions on their own communications needs and how a particular provider’s menu of services can meet those needs; they do not base their purchasing

¹⁷ *Geotek* at ¶ 27.

¹⁸ These categories reflect only 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.

¹⁹ Remarks by Michael K. Powell, Chairman, Federal Communications Commission, Before the Federal Communications Bar Association, Washington, D.C., June 21, 2001, at p. 6.

choices on the spectrum used by each carrier providing these mobile services. Therefore, the Commission should not base its competitive analysis on such artificial spectrum classifications, but instead should consider the competitive realities of the wireless marketplace.²⁰

Pronouncements from Congress, the Commission, the Bureau, industry analysts and CMRS carriers support the conclusion that the industry has converged toward a single, broad-based CMRS market. Nextel's offering of integrated mobile voice/dispatch services triggered this wave of competition, and the assignment of Chadmoore's 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. For these reasons, the only relevant market for analyzing Nextel's acquisition of Chadmoore's channels is the CMRS marketplace.

1. Congress, the Commission and the Bureau Have Recognized the Existence of a Single CMRS Product Market and the Need to Promote Regulatory Parity Within CMRS.

As early as 1994, the Commission concluded that all CMRS services are competitive or potentially competitive and are, therefore, part of a single product market.²¹ Congress created this CMRS classification of mobile services in 1993 due to the convergence of numerous private and

²⁰ 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.").

²¹ *See Third Report and Order*, 9 F.C.C.R. 8009, at ¶¶ 37 *et seq.* (1994) ("Third R&O"); *see also* 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, 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.

common carrier mobile services, such as cellular, 800 MHz SMR and 900 MHz SMR, that were fulfilling similar consumer needs through similar service offerings.²² As technologies had 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.²³

In 1997, when the Bureau evaluated Nextel's proposed acquisition of Pittencrieff Communications, Inc.,²⁴ 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.²⁵ 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,

²² *Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, 107 Stat. 312 (1993) ("1993 Budget Act").

²³ See 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).

²⁴ 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").

²⁵ *Id.* at ¶¶ 44, 54.

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.”²⁶

By last year, 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 evaluating proposed transfers and assignments.”²⁷ However, 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,” it 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.”²⁸

Following the Bureau’s *Geotek* decision, the Commission released its Fifth Report on Competition and 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.²⁹ Finally, in April 2001, the Bureau “recognize[d] the increasing convergence of CMRS services” and stated that it “may well adopt a broader market definition in reviewing future

²⁶ *Id.* at ¶ 54.

²⁷ *Geotek* at ¶ 27.

²⁸ *Id.* at ¶¶ 27-28 (“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.”)

transactions.”³⁰ These findings of Congress, the Commission and the Bureau reflect the reality that all CMRS providers now compete directly with one another in a single, integrated CMRS market.

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

The Strategis Group recently stated in its report on the state of SMR that “[d]ispatch communications is neither an industry nor a distinct technology. Rather, it is an application that can be provided by several different technologies.”³¹ Similarly, industry analysts have noted the wireless 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.”³²
- SMR integrated voice/dispatch service “awakened the sleeping giant of the cellular industry, which previously had never paid much attention to the dispatch market.”³³
- “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

²⁹ Fifth Report on Competition at p. 71.

³⁰ *Motorola* at ¶ 12; *see also Arch* at ¶ 11 (“. . . we do not foreclose the possibility that we may adopt an expanded market definition in a future transaction. . .”).

³¹ The State of the SMR Industry: Nextel and Dispatch Communications, The Strategis Group, September 2000, at 7 (“September 2000 Strategis Report”).

³² 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).

³³ Alan Tilles, “Is there still a place for plain old dispatch?”, Radio Comm. Rept., at p.42, Feb. 28, 2000.

something to lessen the differences in services . . . Group calling is only the first of several steps carriers will take to compete with Nextel.”³⁴

- “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].”³⁵
- “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.”³⁶
- “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.”³⁷
- “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.”³⁸ These “dispatch calling plans will grow rapidly in the next five years.”³⁹

As the Bureau has recognized, Nextel started this revolution with its “bundled offering of mobile voice and the Direct Connect service option [that] straddle[s] the two *Pittencrieff* markets,”⁴⁰

³⁴ 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”).

³⁵ See First Union Securities Covers NXTL, First Union Securities, Nov. 11, 2000 <http://www.cnetinvestor.com/yahoonews/newsitem-yahoo.asp?SYMBOL=R657350>).

³⁶ Wireless Wars at p.20.

³⁷ *Id.*

³⁸ US Dispatch Markets, The Strategis Group, January 2000, at p.75 (“January 2000 Strategis Report”).

³⁹ *Id.* at p.82.

⁴⁰ *Geotek* at ¶ 27.

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 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.”⁴¹

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, including using mobile telephone service as a direct substitute for two-way radios (*i.e.*, trunked dispatch services). Specifically, Exhibit 3 includes a promotion of AT&T Wireless' mobile-to-mobile Group Calling Plan, stating that “[w]ith the quality, performance, security, and coverage of AT&T Group Calling, *there's no longer a need to connect your workgroup with two-way radios or pagers.*”⁴²

In short, the Commission's review, industry analysts' studies, carriers' business plans, and consumer response all confirm, as Congress intended in the 1993 Budget Act, 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

⁴¹ Wireless Wars at p.20.

⁴² Exhibit 3, emphasis added.

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.

B. The Assignment of Chadmoore's Licenses to Nextel Will Increase Competition in the CMRS Market.

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

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 orders of magnitude. Consumer harm would come from a *decrease* in service, but the evidence from Nextel's growing subscriber base, now numbering over seven million, shows that Nextel has no ability or incentive to decrease service offerings. To the contrary, Nextel's innovations have maximized public interest benefits from this spectrum. The same increase in usage is sure to result from Nextel's stewardship of the Chadmoore licenses.

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).

The Strategis Group has stated that, “[t]o continue to grow its customer base and offer consumer services as well [as business-focused services], Nextel will need to add capacity.”⁴⁴ Nextel is acquiring Chadmoore’s licenses to integrate the spectrum into its iDEN network, thus increasing customer capacity, enabling competition-enhancing cost savings, enhancing system robustness, improving coverage, and accelerating introduction of 3G services. As Nextel increases its spectrum capacity and puts this 800 and 900 MHz spectrum to much more efficient use – a significant public interest benefit – there should be a downward pressure on consumer prices and increased development of service options industry-wide.

The Bureau has recognized that Nextel’s deployment of efficient digital technologies provides a direct public interest benefit.⁴⁵ 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 recognized 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.”⁴⁶ In discussing the pro-competitive effects of previous license assignments to Nextel, the Bureau further observed that Nextel likely can provide greater competitive benefits than other prospective buyers of these licenses because Nextel is one of a limited number of firms that can provide nationwide service over its own network.⁴⁷

⁴⁴ Strategis Report at p. 6.

⁴⁵ *Pittencrieff* at ¶ 65.

⁴⁶ *Geotek* at ¶ 47.

⁴⁷ *Id.* at ¶ 46.

The addition of this spectrum to Nextel's network still leaves Nextel 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 Chadmoore's 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 places Nextel at a average of only 20 MHz in any market and less in most. The Bureau'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.

C. **Analysis of a "Separate" Trunked Dispatch Service Market Still Leads to the Conclusion that the Proposed Assignment Will Cause No Harm to Competition.**

The Bureau recognized in *Geotek* and *Motorola* that, 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 800 and 900 MHz licenses will not cause competitive harm to consumers.⁴⁸ As stated above, the proposed transaction will enhance Nextel's competitive options by increasing its spectrum capacity in markets across the United States, improving the quality of its service, increasing its flexibility in building out a nationwide footprint and thereby increasing competition that redounds to the benefit of all wireless consumers.

At the same time, competition in the separate "trunked dispatch market" is not adversely impacted because, as the Bureau concluded in *Motorola*, there are numerous providers of trunked

⁴⁸ *Geotek* at ¶ 27; *Motorola* at ¶ 12; see also *Arch* at ¶ 11.

dispatch services competing for those consumers in search of push-to-talk dispatch service. Whether these services are being provided at 800 MHz, 900 MHz, 220 MHz, 450 MHz or 217-219 MHz -- those services that “at the very least” make up the trunked dispatch market as defined by the Bureau in *Motorola* and *Arch*⁴⁹ -- users seeking such services will continue to have competitive alternatives.⁵⁰ The Commission correctly found that even if it limited its analysis to spectrum traditionally allocated for dispatch-like services, there is sufficient competition to assuage any competitive concerns.

Additionally, those same consumers are finding interconnect mobile telephone service a substantial substitute for traditional dispatch service. In *Motorola*, the Bureau declined to include any cellular and PCS spectrum in its trunked dispatch market analysis because it did “not have information in the record as to the nature of customer dispatch usage to make a determination regarding the extent to which cellular and PCS group calling plans should be included in a trunked dispatch market.”⁵¹ Since the vast majority of Nextel’s Direct Connect calls are only between two units,⁵² the mobile-to-mobile calling plans offered by cellular and PCS providers can serve the needs of almost all dispatch users. Nextel’s own customer churn experience,⁵³ and AT&T Wireless’ web page promotion stating that “there’s no longer a need to connect your workgroup with two-way

⁴⁹ *Motorola* at ¶ 12; *Arch* at ¶ 14.

⁵⁰ See Exhibit 1 attached hereto.

⁵¹ *Motorola* at ¶ 22.

⁵² Report of Gregory L. Rosston, attached hereto at Exhibit 4, at p. 13, *citing* Strategis Report at p. 50.

⁵³ See Report of Gregory L. Rosston, attached hereto at Exhibit 4, at p. 12, noting that nearly half of Nextel’s departing customers who are moving to a cellular or PCS plan, state that they are moving to a calling plan that does not charge airtime for mobile-to-mobile calling.

radios or pagers,”⁵⁴ provide two additional pieces of evidence that traditional cellular and PCS licensees are real competition for dispatch services. Because cellular and PCS providers are offering services that are substitutable for trunked dispatch calling, the Bureau must consider these providers as competitors in the trunked dispatch market.

In *Motorola*, the Bureau also concluded that the appropriate trunked dispatch market analysis must exclude a portion of Nextel’s 800 and 900 MHz spectrum holdings since much of Nextel’s spectrum is used to provide competitive interconnected mobile services.⁵⁵ Excluding Nextel’s spectrum used to provide interconnected services, while properly including the 220 MHz, 217-129 MHz, 450 MHz and 800 and 900 MHz spectrum available for dispatch services, results in a finding that Nextel’s acquisition of Chadmoore’s spectrum has no adverse competitive impact on the trunked dispatch market. Additionally, in *Motorola*, the Bureau found that there continues to be a likelihood of competitive entry by licensees in the 800 Business and Industrial Land Transportation spectrum band,⁵⁶ as well as by providers of “traditional dispatch services,” licensees that “own[] and operat[e] an in-house radio system or private dispatch system,” and licensees that provide “wireless data communications. . . .”⁵⁷

⁵⁴ See Exhibit 3 attached hereto.

⁵⁵ *Motorola* at ¶ 28.

⁵⁶ *Id.* at ¶ 31. There also is potential dispatch entry in the 900 MHz Business and Industrial Land Transportation spectrum as the Commission currently is considering permitting commercial operations on those channels. See Report and Order and Further Notice Of Proposed Rulemaking, WT Docket No. 99-87, FCC 00-403, at ¶ 144.

⁵⁷ *Id.* at ¶ 32. 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.” January 2000 Strategis Report at p. 85; see also September Strategis Report at p. 8. 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

In addition to these opportunities for carriers to provide competitive alternatives to trunked dispatch services, the Commission recently licensed additional spectrum that likely will 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 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.

As the Bureau recognized in *Geotek*, this 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 to compete away excess profits.”⁶¹ In fact, the provision of service in the dispatch segment of the

needs . . .” *Id.*

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 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 Guard Band Order. at ¶¶ 19-24.

⁶¹ *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. See also *Motorola* at ¶ 32 (“Further, we believe that the ability of at least some consumers to use, in the alternative, traditional dispatch, private dispatch, and data dispatch provides

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.”⁶² As further evidence that dispatch supply far outpaces demand, the Bureau found that “spectrum assets are exiting traditional dispatch in search of higher returns.”⁶³ 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. In rural areas in particular, the Bureau has recognized that there is significantly less demand for dispatch services than in urban areas.⁶⁴ 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 – just as the Bureau found in *Motorola* -- significant opportunity for additional market entry.

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

There can be no dispute that the proposed assignment of Chadmoore’s 800 MHz licenses to Nextel will increase competition in the provision of mobile voice services. Chadmoore currently

additional constraint against the ability of Nextel to wield market power.”)

⁶² *Geotek* at ¶ 41 (“while dispatch demand has grown, dispatch supply appears to have been growing even more rapidly.”).

⁶³ *Id.* at ¶ 43.

⁶⁴ *Pittencrieff* at ¶ 73.

does not use its 800 MHz licenses primarily to provide interconnected mobile telephone service. Only a minimal number of Chadmoore's customers today have access to any interconnected services on Chadmoore's network. Consequently, Nextel's acquisition of Chadmoore's licenses will not result in the elimination of a competitor in the provision of mobile voice services. Rather, Nextel's use of Chadmoore's 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,⁶⁵ 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."⁶⁶

As the Commission recently stated, "the operator most responsible for using digital technology to make SMR a mobile telephone competitor has been Nextel."⁶⁷ Competition among Nextel and other CMRS licensees, according to the Commission, has fueled a consumer movement to digital technologies,⁶⁸ increased overall mobile telephone subscribership,⁶⁹ and initiated a continued

⁶⁵ See, e.g., September 2000 Strategis Report at p. 54 ("The Strategis Group believes that Nextel's subscriber growth rates have evoked a profound response from AT&T Wireless and other cellular operators.")

⁶⁶ Fourth Report on Competition at p. 5.

⁶⁷ Fifth Report on Competition at p. 30.

⁶⁸ *Id.* at pp. 13-14.

⁶⁹ *Id.* at p. 9.

downward trend in prices.⁷⁰ This decrease in prices, moreover, appears to have resulted in overall increased usage by subscribers.⁷¹

Mobile voice service is, of course, already the poster-child for competition in the telecommunications industry. 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 World Wide Web home page of the Cellular Telecommunications and Internet Association (CTIA) reports that total mobile telephone subscribership is over 117 million as of June 2001.⁷² 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-Chadmoore transaction would have an impact. As of 2001, 91% of the U.S. population had at least three mobile telephone providers offering service within their geographic market; 75% had a choice of at least five providers; and 12% of the population could choose among seven different providers.⁷³

It is this competitive reality that is driving Nextel's proposed acquisition of Chadmoore's 800 MHz licenses, both as a means to introduce more competitive services and to respond to the initiatives of competitors. The Strategis Group projects that 20% of all cellular/PCS subscribers by 2004 will be using a mobile-to-mobile calling plan – plans aimed at competing directly with Nextel's

⁷⁰ *Id.* at pp. 18-20.

⁷¹ *Id.* at p. 23.

⁷² See www.wow-com.com

⁷³ Thomas Sugrue, "Opening Remarks," 6th Annual CMRS Competition Report, June 20, 2001.

Direct Connect service.⁷⁴ Consequently, as the Bureau found in *Geotek*, assigning additional 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.”⁷⁵ Acquisition of this spectrum will facilitate Nextel’s ability to aggressively respond to the evolving and increasingly innovative marketing and pricing plans resulting from competition among CMRS providers.

As the Bureau also has recognized, the assignment of additional spectrum 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. The increased spectrum capacity provided by Chadmoore’s 800 and 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 Chadmoore’s 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 will benefit the public by fueling competition and innovation among CMRS providers. Accordingly, Nextel respectfully asks that the Commission approve the assignment of Chadmoore’s

⁷⁴ September 2000 Strategis Report at p. 67.

⁷⁵ *Geotek* at ¶ 48.

800 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.