

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

In the Matter of)
)
Applications of Sprint Nextel Corporation,)
Transferor)
)
SoftBank, Corp., and Starburst II, Inc.) IB Docket No. 12-343
Transferees)
)
Joint Application for Consent to Transfer)
International and Domestic Authority)
Pursuant to Section 214 of the)
Communications Act of 1934, as amended)

LINE SYSTEMS, INC. PETITION TO DENY

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January 28, 2013

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LINE SYSTEMS, INC. PETITION TO DENY

Line Systems, Inc. (“LSI”), by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Federal Communications Commission (“Commission” or “FCC”) *Public Notice*,¹ hereby files this Petition to Deny the above-captioned application (“Proposed Transaction”). LSI believes that Sprint Nextel’s continuous, open, and brazen flouting of the Commission’s rules and bad faith disputes are harmful to competition and demonstrate a disregard for its obligation to serve the public interest. Without conditions on the Proposed Transaction requiring Sprint Nextel to comply with the same rules as smaller competitors, Sprint Nextel will be emboldened to use its newly expanded size and investment capital to continue to ignore Commission rules in order to stifle competition.

¹ *SoftBank and Sprint Seek FCC Consent to the Transfer of Control of Various Licenses, Leases, and Authorizations from Sprint to SoftBank, and to the Grant of a Declaratory Ruling Under Section 310(b)(4) of the Communications Act, Public Notice*, IB Docket No. 12-343, DA-12-1924 (Nov. 30, 2012). *Softbank and Sprint File Amendment to Their Previously Filed Applications to Reflect Sprint’s Proposed Acquisition of De Facto Control of Clearwire, Public Notice*, IB Docket. No. 12.343, DA 12-2090 (Dec. 27, 2012).

INTRODUCTION AND SUMMARY

LSI is a full-service integrated communications provider to business customers. Its products and services include hosted phone applications, traditional local and long distance telephone services, and data/Internet solutions. Services are provided to small- and medium-sized business customers, via an unbundled network platform and/or a resale basis. LSI holds domestic and international telecommunications authority from the FCC.

Sprint Nextel and SoftBank (collectively, the “Applicants”) filed a petition with the Commission on November 16, 2012 seeking appropriate federal authority for the Proposed Transaction.² On December 20, 2012, the Applicants updated their Application requesting that the Commission permit the transfer of *de facto* as well as *de jure* control of the licenses, leases and authorizations of Clearwire Corporation (“Clearwire”) to SoftBank, through its proposed 70 percent ownership of Sprint Nextel.³ Subsequently, DISH Network filed a petition to hold the proceeding in abeyance raising serious concerns about Sprint Nextel’s rush to raise new financing at any cost.⁴

The Proposed Transaction is not in the public interest, and the Applicants cannot show that the Proposed Transaction satisfies the Commission’s transaction approval standard. Sprint Nextel has a long history of disregard for the law, including Commission tariffs, as well as negotiated contracts, and routine filings of bad faith disputes with competitor carriers. In 2009,

² *In the Matter of Applications of Sprint Nextel Corporation, Transferor SoftBank Corp., and Starburst II, Inc., Transferees Joint Application for Consent to Transfer International and Domestic Authority Pursuant to Section 214 of the Communications Act of 1934, as amended*, Docket No. IB Docket No. 12-343.

³ *Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, Amendment*, IB Docket No. 12-343 (filed Dec. 20, 2012) at 1 n.2, 3. In 2008, the Commission previously approved Sprint Nextel’s acquisition of majority control of Clearwire. See *Sprint Nextel Corporation and Clearwire Corporation, Memorandum Opinion and Order*, 23 FCC Rcd. 17570, ¶ 9 (2008) (Commission approved Sprint Nextel acquiring an approximately 51 percent ownership interest in Clearwire).

⁴ See *Dish Network Request to Hold Proceeding in Abeyance*, IB Docket No. 12-343 (Jan. 16, 2013).

Sprint Nextel debuted the One Sprint Policy to ensure that Sprint Nextel's many subsidiaries act as one company. Under the One Sprint Policy Sprint Nextel subsidiaries have taken switched access services from smaller competitors without compensation. A federal judge determined that the One Sprint Policy led to Sprint subsidiaries purposely avoiding paying legitimate switched access charges in an effort to cut its costs.

Critically, Sprint does not pay the portions of an invoice that are rightfully due, and dispute those portions that it contests. It simply refuses in bad faith all payments. Sprint unilaterally decided to strengthen its own bottom line while directly harming its competitors by refusing to pay for legitimate services.

Sprint has also been nonresponsive to requests for an explanation as to why LSI routinely receives Sprint traffic without a Calling Party Number. Sprint's refusal to file good faith disputes or to explain why its traffic does not contain CPN is contrary to the public interest because it harms competition. The Proposed Transaction should not be approved unless the Commission can be sure that Sprint will not use its significant capital infusion to further harm competition and continue to act in bad faith under the One Sprint cost control policy. In the event that the transaction is approved, the sole method to ensure that Sprint does not flout the laws and rules of the Commission is to attach legally enforceable conditions.

DISCUSSION

I. The Proposed Acquisition Fails to Meet the Commission's Standard of Review

The Commission's review of the transaction is governed by the Communications Act. Under Sections 214(a) and 310(d), Sprint Nextel and SoftBank must show that the proposed transaction serves the public interest, convenience, and necessity.⁵ In its transaction analysis the

⁵ 47 U.S.C. §§ 214(a), 310(d).

Commission first determines whether the proposed transaction complies with federal law or the Commission's rules.⁶ The Commission then determines whether the transaction will harm the public interest by substantially frustrating or impairing the objectives or implementation of the Communications Act.⁷ During its review, the Commission employs a balancing test weighing any potential public interest benefits compared to potential public interest harms.⁸ Sprint Nextel and SoftBank bear the burden of demonstrating, by a preponderance of the evidence, whether the Proposed Transaction serves the public interest.⁹ If the Commission is unable to find that the Proposed Transaction serves the public interest, *for any reason*, including harm to competition, the Commission may designate the applications for hearing.¹⁰

The Commission's jurisprudence includes decisions where the Commission found that a transaction could increase the incentives and opportunities to engage in anticompetitive activity by allowing a merged entity to export practices that impede competition from one service to another.¹¹ For example, in the CenturyTel/Embarq merger, in order to ensure that the increased size of the merged entity did not result in anticompetitive behavior, the Commission included enforceable conditions to the merger.¹² The Proposed Transaction raises the same issues as the CenturyTel/Embarq merger, and conditions are needed to serve the public interest.

⁶ See *Applications of AT&T Inc. and Centennial Communications Corp.*, Memorandum Opinion and Order, 24 FCC Rcd. 13915, ¶ 27 (2009).

⁷ See *Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17444, ¶ 26 (2008).

⁸ See *Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd. 8741, ¶ 9 (2008). See also *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶ 19 (2007). ("CenturyTel/Embarq Order").

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

¹¹ See, e.g., *CenturyTel/Embarq Order*, ¶ 33.

¹² *Id.*

II. The Proposed Transaction Does Not Serve the Public Interest Because Sprint Nextel Refuses to Properly Compensate Carriers While Engaging in Bad Faith Disputes and Openly Flouting Commission Rules

A. Sprint Nextel Subsidiaries Take Switched Access Services from Smaller Competitors without Compensation or Good Faith Disputes

Although much of the discussion surrounding the Proposed Transaction involves Sprint Nextel's wireless subsidiaries, Sprint Nextel also owns and controls a major wireline carrier. Along with its wireless subsidiaries, Sprint Nextel, through its wireline subsidiary, Sprint Communications, continues to refuse to compensate local exchange carriers for performing switched access transport and termination. For example, as part of its business, LSI provides telecommunications services to Sprint Nextel's wireless and wireline subsidiaries ("Sprint Nextel Subsidiaries" or "Sprint") by terminating traffic. More specifically, when end user customers of Sprint Nextel Subsidiaries call end user customers of LSI, LSI carries the call and delivers it to its end user customer to complete the call. To the extent that Sprint Nextel Subsidiaries provide similar wireline services as LSI, LSI also competes against Sprint Nextel's wireline subsidiaries. Notably, notwithstanding the ultimate outcome of this transaction, Sprint is substantially larger than LSI and most other competitive local exchange carriers, has decades of brand name recognition, and is more entrenched in the markets.

LSI has a direct interest in the outcome of this proceeding. Sprint Nextel Subsidiaries are customers of LSI because LSI provides Sprint Nextel Subsidiaries, both wireline and wireless, tariffed switched access services, but is not compensated. LSI is required to incur switched access costs regardless of whether or not it receives payment from any Sprint entity. Indeed, since January 2007, LSI has been terminating traffic delivered by Sprint Nextel Subsidiaries without any compensation. Sprint does not analyze LSI's invoices, which are for calls originating through switches having Sprint Local Routing Numbers (LRNs), to determine the

appropriate amounts to be paid and disputed. Instead, Sprint just refuses to pay all the invoices. And despite the fact that years have passed since LSI began sending invoices, Sprint has still not paid to LSI on any of its traffic. As Sprint Communications has filed bad faith disputes and brazenly ignored the rules for several years despite duly detailed and issued industry standard invoices, LSI has terminated over 29 million minutes of traffic originated from Sprint customers without any payment. As discussed below, Sprint's pattern and practice of bad faith, "catch-me-if-you-can" negotiations have been going on for at least a decade and have been found to be illegal by at least one federal court, yet Sprint continues to dump uncompensated traffic on its smaller competitors and impose extensive legal costs on carriers to recover what should be routine tariffed charges.

Sprint Nextel Subsidiaries invoice their end user customers and generate revenue from those end user customers for the connection of their calls. LSI and other local exchange carriers, however, provide for the termination of calls to LSI's customers and incur costs for performing termination functions. Because Sprint does not pay any compensation to LSI or other carriers for the termination of these calls, Sprint retains all the revenue generated by its end user customers. For Sprint, a large, well-known company, this tactic allows it to collect and keep all the revenues it receives from its customers while harming its smaller wireline competitors by prolonging their efforts to collect revenue by years, and only after expending substantial internal and outside legal resources to do so. Sprint's "self-help" action gives Sprint the insidious advantage of allowing Sprint to consume valuable services at no charge, while forcing direct, indirect, and significant opportunity costs¹³ on its smaller competitor.

¹³ Sprint's bad faith disputes tie up significant time, energy, and resources of internal personnel that should be devoted to growing LSI's business so that it can better compete with Sprint and other competitors.

The Commission must take appropriate action to ensure that Sprint ceases and desists from its longstanding, recidivist pattern and practice of illegal self-help against its smaller competitors. Commission action is necessary so that smaller competitors, like LSI, can have an equal opportunity to compete against Sprint in the marketplace. Sprint's actions deprive consumers from the benefit of a competitive marketplace, including the attendant benefits of lower prices, increased innovation, and more responsive customer service. Moreover, the Applicants do not properly address how the Proposed Transaction will impact the competitive wireline market. Rather, Sprint states that there is no risk of competitive harm because the acquiring companies lack attributable interests in any U.S. wireless carriers or compete with Sprint wireline telecommunications services. Sprint also claims that the Proposed Transaction will be seamless to customers and that its wireline operations will benefit from the improved balance sheet that will result from the capital infusion.

As such, Sprint Nextel completely disregards the question of whether approval of the transaction will increase the ability of Sprint to harm the competitive marketplace vis-à-vis its relationship with its legitimate competitors. LSI asserts that approval of the Proposed Transaction without imposing appropriate conditions will detrimentally affect the operation of the competitive market as well as the ability of consumers, including rural consumers, to receive desired telecommunications services.

B. Sprint Has a Longstanding Pattern and Practice of Bad Faith Disputes, including a Federal Court Decision Finding that its Disputes Were In Fact a Cost Control Campaign Disguised as Traffic Disputes

Sprint Nextel's behavior is not inadvertent or accidental. Sprint Nextel purposefully created a policy called the "One Sprint Policy" whose aim was to advance the interests of Sprint by ensuring that all Sprint divisions take consistent public policy positions on

telecommunications matters, resulting in company-wide uniformity.¹⁴ A federal court in the Eastern District of Virginia found that Sprint has used its One Sprint Policy to engage in a calculated process to systematically and improperly cut costs to unfairly harm competitors. In a 2011 decision following a bench trial, a Court found, that in 2009—the same time period when Sprint was also refusing to make any switched access payments to LSI—Sprint had “embarked on company-wide cost-cutting efforts.”¹⁵ The court found that adverse economic conditions in 2009 drove Sprint to dispute access charges and that its “disputes were based on efforts to cut costs, rather than on a legitimately held belief” that Sprint was not required “to pay at the levels which, for years, it had paid without protest.”¹⁶ Therefore, due to Sprint’s profitability problems, Sprint embarked on a company-wide cost-cutting effort to contest legitimate access charges with other carriers across the industry, including Sprint’s dealings with LSI.¹⁷ To emphasize, a federal judge found that Sprint’s policy decision to dispute access charges emanated, not from any understanding the company may have had of Sprint’s traffic termination agreement, but from the company’s decision to reduce costs.¹⁸ Sprint’s “coordinated effort to contest access charges” was so thorough and important that it created an internal group to monitor its “savings” and keep the company on track to meet its savings target by disputing valid access charges.¹⁹ As part of this proceeding, the Commission may want to inquire what has become of that group. Sprint’s

¹⁴ *Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc.*, 759 F. Supp. 2d 789, 796 (E.D. Va. 2011) (“*Sprint Virginia Case*”).

¹⁵ *Sprint Virginia Case*, 759 F. Supp. 2d at 793.

¹⁶ *Sprint Virginia Case*, 759 F. Supp. 2d at 796.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, see also 797.

conduct from mid-2009 onward reveals, as the court duly noted, a company more interested in improper cost cutting than meeting its contractual obligations.²⁰

This is not the first time that Sprint has engaged in scorched earth tactics against its competitors. At least one other Sprint competitor, Core Communications, has made very similar nonpayment allegations before the Pennsylvania Public Utilities Commission. In addition, Pac-West filed suit in California against Sprint for its failure to make any payment on millions of minutes of traffic from Sprint wireless subsidiaries.²¹ In another extensive nonpayment campaign, Sprint previously halted switched access payments to sixteen (16) competitive local exchange carrier (“CLEC”) competitors, settling with 13 of them thereafter.²² Sprint’s mantra appears to be get away with as much as it can until it gets caught. This proceeding presents a unique opportunity for the Commission to take preventive measures to disrupt Sprint’s recidivism in order to protect the public interest. Simply put, Sprint’s “Wild West” approach to intercarrier payments is bad for competition and bad for consumers.

Sprint has never paid LSI’s duly tariffed access charges on any of its traffic despite the fact that it has also never presented any evidence (of any kind) that the traffic terminated by LSI was not originated by Sprint. Additionally, Sprint has not produced any evidence that traffic terminated by LSI did not originate or terminate at the locations identified by LSI. As a reminder, a provider of telecommunications services to Sprint, such as LSI, is legally and reasonably entitled to receive adequate and reasonable compensation for Sprint’s use of their

²⁰ *Sprint Virginia Case*, 759 F. Supp. 2d at 797.

²¹ See Reply Comments of Pac-West Telecomm at 4, CC Docket 01-92 (Apr. 18, 2011) (four CMRS carriers “have aggressively opposed Pac-West’s efforts to collect on literally years and years of minutes of use in California.”).

²² See *Advantel, LLC v. Sprint Communications Co. L.P.*, 125 F. Supp. 2d 800 (2001). This is not the first time that Sprint has engaged in self-help strong-arm tactics to the detriment of its smaller CLEC competitors. A decade ago, Sprint Communications Co. summarily stopped access charge payments to sixteen CLECs in order to force them to reduce their access rates. *Id.* n.3. (“Initially, there were sixteen plaintiffs in the action against Sprint.”).

networks. The impact on consumers of carriers refusing to pay for services rendered has been well-documented in various filings made at the FCC.²³ No Sprint entity has presented any evidence to support its argument. The Commission has already clearly stated that such behavior cannot be condoned and raises legitimate concerns related to competition. The fact that Sprint treats at least one small competitor in this manner, while at the same time being admonished by a federal court for a bad faith payments policy integrated into the warp and woof of Sprint's policies, should raise alarm at the Commission.

The Commission must take affirmative action to address Sprint's blatant nonpayment of its obligations arising under federal and state access tariffs. The Commission must implement appropriate merger conditions to address the impact of such continued behavior on the public interest if the Proposed Transaction is to be approved. There is every reason to believe that, even if LSI's individual dispute was resolved, Sprint would soon revert to the same abusive tactics with other CLECs. Sprint Nextel has a pattern and practice of leveraging its significant market share to the detriment of its small competitors. The expansion of Sprint's reach through the investment which is the subject of this transaction, combined with its acquisition of Clearwire, makes this a critical time for the Commission to address in a meaningful way Sprint's pattern of anticompetitive behavior.

Sprint Nextel Subsidiaries' continued "self-help" is in direct violation of the Commission's rules requiring that a carrier compensate a local exchange carrier for the provision of service. Refusing to pay for access service is the essence of self-help. The Commission has recognized a CLEC's right to collect tariffed access charges for over a decade. The Commission has consistently held that "the law is clear on the right of a carrier to collect its tariffed charges,

²³ See Letter from Colin Sandy, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 (July 9, 2009).

even when those charges may be in dispute between the parties”²⁴ Indeed, the Commission “do[es] not endorse such withholding of payment outside the context of any applicable tariffed dispute resolution provisions.”²⁵ In the *Connect America Fund Order*, the Commission also reminded “parties of their payment obligations under tariffs and contracts to which they are a party.”²⁶

Sprint has made clear that its Proposed Transaction will significantly increase the number of customers it will serve to 92 million subscribers. The result will be to significantly increase the volume of Sprint calls sent to LSI, and other carriers, for call termination. Unless Sprint is properly compensating the terminating carriers for those calls, the result will be to force terminating carriers to find a way to absorb the increased costs (which may lead to decreased service for customers) or choose to exit the market. There can be no level playing field for competition if some carriers pay others for the use of their networks, but others do not. An empowered Sprint Nextel, strengthened by new financial resources through this transaction will harm its competitors by strengthening Sprint’s ability to send even larger amounts of traffic to LSI for termination without payment.

Sprint Nextel is likely to argue that it is merely a holding company and that most of its operators are subsidiaries that act independently. The One Sprint Policy described above belies that notion. The One Sprint Policy is a top-down approach from the parent company to its subsidiaries. As described by the federal court in the Virginia Case, through the One Sprint

²⁴ See *Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone of Missouri, Inc.*, 4 FCC Rcd. 8338, ¶ 9 (1989). See also *Communique Telecommunications, Inc. DBA Logical!*, 10 FCC Rcd. 10399, ¶ 36 (1995).

²⁵ *All American Telephone Co., et al. v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd. 723, ¶ 13 (2011). Although not endorsing such practices, the Commission also found that self-help alone is not a violation of Section 201. *Id.*

²⁶ See, *The Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 17663, ¶ 700 (2011) (“*Connect America Fund Order*”).

Policy described above, the Sprint Nextel Subsidiaries have demonstrated that they have the ability to collude on common policies and actions. If Sprint Nextel is permitted to increase its market share through significant additional financing, a more powerful entity will be created which will increase the ability of the Sprint Nextel Subsidiaries to further expand its business by simply not paying for services rendered.

It is important that Sprint Nextel, through the Sprint Nextel Subsidiaries and the One Sprint Policy but under SoftBank's ownership, not be permitted to continue Sprint's illegal behavior. The Commission should impress upon remind the new entity the importance of its obligation to comply with the Commission's rules. If Sprint Nextel will not comply with the rules while the Commission is watching with a close eye, it never will.

III. LSI Continues to Receive From Sprint Nextel Subsidiaries Traffic Lacking CPN and Continues to Drag Its Feet to Provide Supporting Records Demonstrating a Continuing Disregard for Commission Rules That Proves the Need for Conditions

Sprint Nextel's continued history of failing to pay legal access charge rates is not its only illegal action inconsistent with the public interest. Consistent with LSI's own experiences, Sprint Communications has illegally and improperly routed large volumes of phantom traffic to LSI for termination while hiding important call detail with the purpose of avoiding its legally required payment obligations to the terminating carriers. Approval of the Proposed Transaction threatens to enhance Sprint's ability to continue this anticompetitive behavior to the detriment of LSI and other smaller carriers. The end result of this action is significant harm to the public interest.

Critically, a significant portion of the traffic LSI receives from Sprint does not contain the Calling Party Number ("CPN") which the Commission has recognized as the primary indicator used by terminating companies of what originating company sent the traffic as well as the location of the calling party. CPN information is important in the intercarrier billing process

so that the terminating carrier knows the originating location of calls for the purposes of jurisdictionalizing and rating calls, and which carrier to invoice. Traffic lacking such fundamental identifying CPN information is described by the Commission and in the industry as “phantom traffic.”²⁷ The Commission has recognized that phantom traffic is a major problem, and strengthened its rules in the *Connect America Fund Order* to prevent parties from generating phantom traffic. The Commission found that “this sort of gamesmanship distorts the intercarrier compensation system and chokes off revenue that carriers depend on to deliver broadband and other essential services to consumers, particularly in rural and difficult to serve areas of the country.”²⁸

Sprint Nextel Subsidiaries have routed large volumes of phantom traffic to LSI. Indeed, Sprint refuses to provide important call detail so that it can avoid making any legally required payments to LSI. This action is consistent with Sprint’s established One Sprint Policy. Commission approval of this transaction will have the consequence of strengthening the ability of Sprint to continue to engage in this anticompetitive behavior to the detriment of the public interest.

It is believed and therefore averred that Sprint is engaged in a pattern and practice of illegally and improperly routing large volumes of phantom traffic to LSI, hiding important call detail in an illegal cost cutting strategy. LSI has raised this issue with Sprint and Sprint has made no effort to halt the flow of traffic lacking CPN. LSI is currently engaged in collections litigation with Sprint to address the collection of past monies due to LSI, but which do not

²⁷ *Connect America Fund Order*, ¶ 703.

²⁸ *Id.* The Commission also found that Parties have documented that phantom traffic is a sizeable problem, with estimates ranging from 3-20 percent of all traffic on carriers’ networks, which costs carriers—and ultimately consumers—potentially hundreds of millions of dollars annually.

address the broader issues raised here. In both proceedings²⁹ currently pursued by LSI against Sprint LSI is seeking to collect the compensation it is due from Sprint.

Not only does Sprint's traffic lack CPN, but there has been an inexplicable diminution of the volume of minutes emanating from Sprint to LSI for termination in recent months. Sprint has never explained why its traffic volumes dropped off precipitously in the period following when LSI filed its complaint. In the two years since LSI raised the phantom traffic issue with Sprint, the monthly volume of traffic identified as Sprint Nextel interMTA dropped from a high of over one million minutes a month, to less than 50,000 minutes slightly two years later. In other words, Sprint is now sending LSI about 5% of the traffic volumes it was sending LSI two years ago. It is hard to believe that Sprint Nextel's call volume decreased that markedly. It appears that Sprint wireless affiliates may have been funneling traffic from other Sprint wireline affiliates or from other third party carriers to LSI for termination, and Sprint only stopped doing so once a lawsuit was commenced. Although Sprint has never explained what it is up to, it seems likely that, if left unchecked by the Commission, this behavior will only get worse as Sprint Nextel is infused with billions of dollars of fresh capital.

The Commission must act to ensure that Sprint Nextel complies with industry norms in order to maintain competition in the industry. The Commission must condition the Proposed Transaction to maintain competition. Otherwise, smaller companies will not be able to compete and will be forced out of business.

²⁹ See *Line Systems Inc., v. Sprint Nextel Corporation*, United States District Court for the Eastern District of Pennsylvania, Docket No. 2:11-CV-06527-TON, Complaint filed on October 18, 2011. LSI has also filed a separate claim for Sprint's termination of intraMTA traffic by Sprint at the Federal Communications Commission. FCC Enforcement File No. EB-11-MDIC-0007.

IV. Conditions Are Required to Ensure Sprint Nextel Acts in the Public Interest

To be clear, LSI is not asking the Commission to resolve its collection claims in the context of this proceeding. Rather, LSI asks the Commission to review and analyze how the billions of dollars in increased financial backing that will flow from approval of this transaction will further enhance the ability of Sprint Nextel to continue to engage in illegal self-help tactics and rely on phantom traffic.

The Commission cannot approve this transaction without appropriate merger conditions because doing so would put the Commission's imprimatur on Sprint's anticompetitive conduct in addition to handing Sprint Nextel the tools (increased market share and greater access to financial resources) to further enhance its ability to continue to engage in this conduct to the detriment of the competitive market and the public interest.

For the reasons explained above, LSI requests that if the Commission chooses to approve the Proposed Transaction it must impose sufficient conditions to assure that the Proposed Transaction will not permit Sprint to engage in anticompetitive behavior that will be harmful to the public interest. The Commission has previously acted in order to ensure that the increased size of a merged entity did not result in anticompetitive behavior by including enforceable conditions to a merger, and it should do so again.³⁰

To correct these outstanding issues, LSI respectfully requests that the Commission impose the following conditions

- 1) Sprint should be required to file a monthly report with the Commission, until further notice by the Commission, identifying all access charge disputes that exceed an outstanding balance of \$10,000.

³⁰ *CenturyTel/Embarq Order*, ¶ 33.

- 2) Sprint should be required to retain CDRs (in standard EMI industry format) relating to any outstanding access dispute so that such records can be made available on 30 days written notice. In LSI's experience, Sprint does not have such a record system in place today.
- 3) Prior to merger approval, Sprint should be required to make available to the Commission any arrangements, written or otherwise, whereby Sprint has terminated access traffic: (1) by disguising the true jurisdictional nature of any Sprint wireless access traffic; (2) on behalf of any non-wireless Sprint entity; or, (3) on behalf of any other third party entity.
- 4) Prior to merger approval, Sprint should be required to file affidavits from a senior managing agent that it has never disguised the jurisdiction of any Sprint wireless traffic; and that no traffic from any other Sprint entity or other third party has been routed through Sprint wireless switches³¹ in the last 5 years.
- 5) Prior to merger approval, Sprint should be required to file a report with the Commission listing all outstanding access disputes for access charges.
- 6) Prior to merger approval, Sprint should be required to provide a detailed report to the Commission on its access payment policies, including steps taken to end its widely reported policy of access self-help through bad faith disputes.

CONCLUSION

The Commission must ensure that the Proposed Transaction is not approved until Sprint ends its anticompetitive behavior. Imposing conditions is the only means to impress upon the management of the new entity the importance of its obligation to comply with Commission rules.

³¹ The traffic that LSI has received is identifiable as having the LRN of Sprint wireless switches.

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If Sprint will not comply with the rules while the Commission is watching with a close eye, it never will. Implementing enforceable conditions on the Proposed Transaction is the only way to ensure the Proposed Transaction complies with the Communications Act requirement that it serves the public interest, and therefore passes legal muster.

Respectfully submitted,

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I, Justin L. Faulb, hereby certify that on this 28th day of January 2013, I caused true and correct copies of the foregoing Comments to be served by electronic mail to the following:

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