

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

Before Commissioners: Brian J. Moline, Chair
Robert E. Krehbiel
Michael C. Moffet

FEB 09 2006

 Docket Room

In the Matter of the Application of Sprint)
Nextel Corporation for Approval of the) Docket No. 06-SCCC-200-MIS
Transfer of Control of United Telephone)
Company of Kansas, United Telephone)
Company of Eastern Kansas, United)
Telephone Company of Southcentral)
Kansas, Sprint Missouri, Inc. d/b/a United)
Telephone Company of Southeastern)
Kansas and Sprint Long Distance, Inc.)
from Sprint Nextel Corporation to LTD)
Holding Company.)

**COMMENTS OF THE
CITIZENS' UTILITY RATEPAYER BOARD**

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following comments in this docket related to the Kansas Corporation Commission's (KCC or Commission) January 26, 2006, Order requesting comments. In support of its position, CURB states and alleges as follows:

I. INTRODUCTION.

1. On August 30, 2005, Sprint Nextel Corporation (Sprint Nextel) filed its application requesting approval to transfer ownership and control of the four Kansas United telephone companies that operate in Kansas and Sprint Long Distance, Inc. from Sprint Nextel to LTD Holding Company (LTD), pursuant to K.S.A. 66-136.

2. On August 31, 2005, the Commission issued an Order Granting Intervention to CURB.

3. On January 10, 2006, the Commission issued an Order adding LTD Holding Company, the Kansas United Companies, and Sprint Long Distance, Inc. as Joint Applicant/Parties.

4. The Commission's January 26, 2006 Order seeks comments on the factors to be included in its public interest analysis of the proposed transfer of ownership by Sprint Nextel. Specifically, the Commission requested comments/suggestions from the applicants, parties, and intervenors concerning the Commission's use of the Merger Standards reaffirmed in Docket No. 97-WSRE-676-MER, Order on Merger Application, issued on September 28, 1999, in evaluating the application filed herein.

II. DISCUSSION.

5. K.S.A. 66-136 states:

No franchise or certificate of convenience and necessity granted to a common carrier or public utility governed by provisions of this act shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder be valid or of any force or effect whatsoever, **unless the assignment, transfer, lease, or contract or agreement shall have been approved by the commission.**

6. The transfer of ownership at issue in this application must be approved by the Commission pursuant to K.S.A. 66-136. As noted by Sprint Nextel in its application, "[w]hile K.S.A. 66-136 does not specify a standard of review, the Commission has generally applied a public interest standard.¹

7. K.S.A. 66-2001 contains the express public policy of the State of Kansas regarding telecommunications:

It is hereby declared to be the public policy of the state to:

(a) **Ensure** that every Kansan will have **access to a first class telecommunications infrastructure** that provides **excellent services** at an **affordable price**;

¹ Application of Sprint Nextel Corporation For the Approval of the Transfer of Control, ¶ 11.

(b) **ensure** that consumers throughout the state realize the benefits of competition through **increased services** and **improved telecommunications facilities and infrastructure** at **reduced rates**;

(c) **promote consumer access to a full range of telecommunications services**, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;

(d) **advance the development of a statewide telecommunications infrastructure** that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and

(e) **protect consumers** of telecommunications services **from** fraudulent business practices and **practices that are inconsistent with the public interest, convenience and necessity**. (bold emphasis added)

8. CURB believes the public policies expressed above cannot be achieved in the transfer of ownership proposed in the application as filed in this proceeding. CURB will discuss briefly below why the Commission should consider and apply both the merger standards reaffirmed by this Commission in the 676 Docket and the factors considered by the Federal Communications Commission (FCC) in the AT&T divestiture proceeding in its analysis of the application in this docket.

9. On September 28, 1999, the Commission reaffirmed standards to be applied to merger applications in its Order on Merger Application in the 676 Docket. The Order specified a number of factors to be weighed and considered in determining whether a merger will “promote the public interest.” The merger standards are set forth below:

(a) The effect of the transaction on consumers, including:

(i) the effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur;

(ii) reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range;

(iii) whether ratepayer benefits resulting from the transaction can be quantified;

(iv) whether there are operational synergies that justify payment of a premium in excess of book value;

- (v) the effect of the proposed transaction on the existing competition.
- (b) The effect of the transaction on the environment.
- (c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state.
- (d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state.
- (e) The effect of the transaction on affected public utility shareholders.
- (f) Whether the transaction maximizes the use of Kansas energy resources.
- (g) Whether the transaction will reduce the possibility of economic waste.
- (h) What impact, if any, the transaction has on the public safety.²

10. Some of the Merger Standards specified in the 676 Docket are not applicable to the spin-off proposed in this docket. Specifically, Merger Standards (b) and (f) (the effect of the transaction on the environment and whether the transaction maximizes the use of Kansas energy resources), do not appear to be relevant to the Commission's public interest analysis of this transaction. However, the remaining Merger Standards are applicable and should be considered by the Commission in its analysis of the public interest regarding this application.

11. In its review of the proposed divestiture of AT&T, the FCC stated: "In determining whether the acquisition of a carrier's facilities or a transfer is in the public interest the Commission has considered a broad range of factors relating to the Section 1 interests in prior cases. These have included, *inter alia*:

- the competitive impact of the transaction,
- the impact on the ratepayers of the carriers involved,
- whether services would continue to be available to the public in a satisfactory manner,
- the financial viability of the acquiring carrier, and
- the transferee's legal, technical and financial qualifications to be a Commission's licensee."³

² *Id.*, at pp. 7-8, ¶ 17.

³ *In the Matter of the Consolidated Application of American Telephone and Telegraph Company and Specified Bell System Companies for Authorization under Sections 214 and 310(d) of the Communications Act of 1934 for Transfers of Interstate Lines, Assignments of Radio Licenses, Transfers of Control of Corporations Holding Radio Licenses and Other Transactions as Described in the Application*, Memorandum Opinion, Order and Authorization

12. Each of the factors considered by the FCC are applicable to the Commission's review of the application in this docket. While the first four enumerated factors are similar to some of the merger standards reaffirmed in the 676 Docket, the fifth factor (the transferee's legal, technical and financial qualifications to be a Commission's licensee) is not enumerated in the merger standards and should be considered by the Commission in this application.

13. Finally, CURB will briefly address the issue of "whether and how the Commission should consider in its public interest analysis, the ongoing decline in the wireline business and the growing convergence of formerly separate services provided over telecommunication, cable, and wireless networks in terms of the viability of the four Kansas United entities, Sprint Long Distance, Inc., and LTD."⁴ CURB believes the ongoing decline in the wireline business is definitely an issue that should be considered by the Commission in its public interest analysis, particularly in light of LTD's negative equity caused by the enormous amount of debt imposed on LTD in the spin-off. The ongoing decline in the wireline business also decreases the level of competition, a factor the Commission will examine under the both the Commission's merger standards and the public interest factors utilized by the FCC. Because it will become focused on the wireline side of the business, LTD becomes a less viable competitor as a result of the spinoff.

III. CONCLUSION.

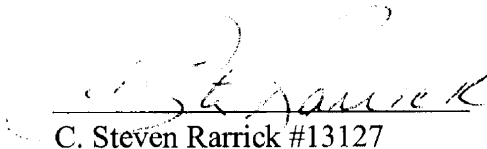
14. CURB submits that the Commission should consider (1) the FCC's public interest factors, (2) the applicable merger standards reaffirmed in the 676 Docket, and (3) the public policy statements contained in K.S.A. 66-2001 in its analysis of the application at issue in this docket.

(AT&T Divestiture Order) (Rel. Dec. 23, 1983), 96 F.C.C. 2d 18, ¶ 68 (footnotes omitted and bulleted format added).

⁴ Order, January 26, 2006, ¶ 5 (the Commission only suggested that the "applicants" address this issue).

Consideration of all these important factors, standards, and policy statements will enable the Commission to fulfill its obligation to protect the public interest, and ensure the public policy goals expressed in K.S.A. 66-2001 are ensured, promoted, advanced, and protected. CURB will evaluate and analyze comments of other parties, and appreciates the opportunity to submit comments on behalf of residential and small commercial ratepayers.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "C. Steven Rarrick", is written over a horizontal line.

C. Steven Rarrick #13127

David Springe #15619

Citizens' Utility Ratepayer Board

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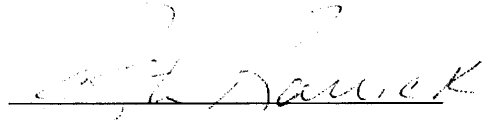
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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

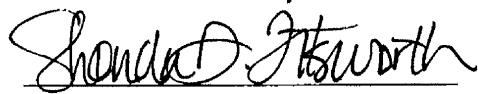
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



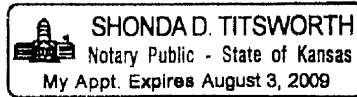
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 9th day of February, 2006.



Notary Public

My Commission expires: 8-03-2009



CERTIFICATE OF SERVICE

06-SCCC-200-MIS

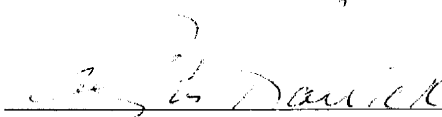
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed or hand-delivered this 9th day of February, 2006, to the following:

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