

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of Sprint Nextel Corporation, Transferor	)	IB Docket No. 12-343
	)	
Softbank Corp., and Starburst II, Inc., Transferees	)	
	)	
Joint Applications for Consent to Transfer of Control of Licenses, Leases, and Authorizations; and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as amended	)	

To: Secretary, Federal Communications Commission  
Attention: The Commission

**OPPOSITION OF SCHOOL BOARD OF PINELLAS COUNTY FLORIDA**

The School Board of Pinellas County Florida (“Pinellas”), by its counsel, opposes the Petition to Deny (“Petition”) filed in the referenced proceeding on behalf of the Consortium for Public Education (“CFPE”) and the Roman Catholic Diocese of Erie, Pennsylvania (“Diocese”) (together, the “Petitioners”). The Petitioners seek to have the Commission deny or condition approval of applications for consent to transfer of control by Sprint Nextel Corporation (“Sprint”) and Softbank Corp. (“Softbank”) on various grounds related to the Educational Broadband Service (“EBS”), including excess capacity leasing arrangements with Clearwire Corporation (“Clearwire”) and the Commission’s requirements for educational use of EBS stations.

Pinellas, a public school district, is licensee of EBS stations WLX226 and WLX227, operating on Channels D1 and D4 and A1 and A4, respectively, in the Tampa, Florida market.

These stations appear in Exhibit 1 of the Petition, which is used to suggest the absence of EBS educational use in a number of the nation's largest markets. In addition, Exhibit 2 of the Petition is a copy of an EBS excess capacity lease agreement between Pinellas and Clearwire Spectrum Holdings II, LLC, covering the Pinellas stations,<sup>1</sup> and the Petition makes arguments based on Petitioners' views of certain elements of the lease. Although these arguments in the Petition are intended to be an attack on Clearwire, they also raise questions about Pinellas' activities in relation to its EBS licenses and lease. Thus, Pinellas feels constrained to respond that it is in full compliance with FCC educational use requirements, the lease is entirely consistent with Commission requirements, and the lease and relationship with Clearwire meets Pinellas' needs and interests.

#### EBS Educational Use

Pointing to the substantial service filings of Pinellas and others whose EBS stations appear in Exhibit 1 of the Petition, Petitioners argue that Clearwire has "done virtually nothing to comply with bare minimum educational use obligations for EBS spectrum," that "Clearwire's provision of services/capacity for educational usage is practically non-existent," and therefore the Commission should not consent to the transfer of control of "Clearwire-Sprint." Petitioners apparently believe that if a particular EBS substantial service filing did not specifically mention a number of Clearwire devices in use by the EBS licensee, the nature of that use, and the number of hours per week of such use, the Commission should presume that no educational use took

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<sup>1</sup> The lease copy attached to the Petition is not executed, because Petitioners apparently found the document online in agenda materials for the 2010 meeting of the School Board in which the lease agreement with Clearwire was approved. These materials are made available pursuant to the Florida open records law. The lease agreement was ultimately approved by the Board and executed in the same form.

place.<sup>2</sup> In addition, and more to the point for Pinellas, Petitioners apparently also believe that they have the right to second-guess, and criticize, a licensee whose substantial service filings relied on its use of a discrete number of Clearwire devices to meet its educational use requirements. These views are misguided.

In response to the November 1, 2011 deadline established by the Commission for all EBS stations to demonstrate that they were providing “substantial service,” Pinellas submitted timely notifications for its stations WLX226 and WLX227. Those notifications included narrative exhibits that demonstrated compliance with applicable Commission requirements. The narratives confirmed that Pinellas leased a portion of its spectrum to Clearwire, that spectrum of each station was deployed and operating in the station’s authorized service area, and that Pinellas satisfied one of the substantial service benchmarks (safe harbors) set forth in the Commission’s rules – in the case of WLX226 and WLX227, the educational use safe harbor. Pinellas pointed to the use of twenty (20) Clearwire 4G USB modems and associated WiMAX connections by students, administrators and teachers for such purposes as educational research, online access to school information and databases, coverage of school events, instruction, email communications, special events, extensive integration with Pinellas’ low power television station (for production of local programs, including student productions), and other similar activities that further Pinellas’ educational mission. Pinellas also stated that the collective use of its Clearwire devices and services exceeded the hours of use required by the Commission each week to meet the applicable substantial service safe harbor.

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<sup>2</sup> Although Petitioners suggest that the purported failure of educational use amounts to a failure by Clearwire to meet its “primary obligations to comply with the FCC rules applicable to EBS,” Pinellas understands that it, as a licensee leasing excess EBS capacity, is required to meet the educational use standards, and Pinellas therefore perceives the Petitioners’ attack on Clearwire on this issue as an unfortunate and unwarranted attack on its compliance with FCC requirements applicable to licensees and, ultimately, its stewardship of its licenses.

There is no basis for Petitioners to criticize Pinellas in this respect. Pinellas fully met applicable FCC requirements based on its lease, the deployment of its channels, and its use of devices operating on the wireless system into which its channels were incorporated. Perhaps Petitioners would have preferred, for themselves, some other lease and educational use arrangement (although Pinellas notes that the substantial service filings of Petitioners relied on even fewer Clearwire devices (12) to meet the educational use safe harbor in the case of the six Diocese stations, and on the 30% coverage safe harbor without any demonstration of educational use in the case of the CFPE station), but that does not call into question the choices Pinellas has made for its stations.

Pinellas understands its regulatory obligations, including the educational use requirements. It has worked successfully with Clearwire to utilize services on the Clearwire system in Tampa for purposes that further its educational goals. The record in this proceeding therefore needs to be clear that Pinellas was in compliance with the minimum educational use requirements in 2011, and it is in compliance with the requirements now.

#### The Pinellas EBS Lease

Petitioners also allege that Clearwire's EBS leases frustrate the ability of EBS licensees to provide educational services and violate the Commission's minimum educational reservation requirements, using an example the lease agreement Pinellas entered into with Clearwire in 2010. The Petition suggests that certain lease terms may be a problem under Commission rules "because it appears to contemplate that Clearwire has the right to deploy a wireless system over 100% of the [licensee's] spectrum . . . including the capacity that is to be reserved for educational use." However, the lease is clearly not for 100% of the stations' spectrum, as it plainly states in Section 5(b) that Pinellas reserves "the capacity on the Channels that is required to be set aside for Licensee's use pursuant to FCC Rules," and in Section 5(a) it defines the

capacity that Clearwire is permitted to lease as the capacity of the Channels “other than” Pinellas’ reserved capacity.

Petitioners seem to misread the lease on another point as well, by confusing two separate Commission requirements -- the educational capacity reservation requirement for leases and the minimum educational use requirement. Thus, Petitioners refer to a particular number of Clearwire accounts being provided to an EBS licensee in exchange “for its purported 5% capacity reservation.” But there is no necessary connection in the Pinellas lease, or in the Commission’s rules, between the number of free accounts Pinellas has bargained for and its reservation of educational capacity. Pinellas has used free accounts provided by the lease to generate the required level of minimum educational use, but it also separately satisfies the educational capacity reservation by actually reserving capacity on its channels for possible future educational use, including use by its own facilities should Pinellas choose to do so.

Pinellas therefore rejects the suggestion that the lease frustrates its ability to provide educational services over its spectrum, now or in the future, or that the lease raises any other compliance concerns under Commission rules.

#### Other Matters

Pinellas’ primary concern in this opposition is to address incorrect suggestions by Petitioners that it may not be in compliance with its obligations as an EBS licensee, or that its lease somehow is inconsistent with Commission requirements, or that the lease frustrates its educational mission. However, Pinellas also has views on the following:

First, Petitioners do not represent the Pinellas’ interests in this or any other matter and their views about Clearwire do not represent the views of Pinellas or, to its knowledge, those of the EBS community in general. Pinellas endorses the filing in this proceeding by the Catholic

Television Network and the National EBS Association, which have traditionally represented the interests of the EBS community in matters before the Commission.

Second, while Petitioners appear to have some sort of difficulty in their relationship with Clearwire, such that they would be motivated to file the Petition to Deny, the Pinellas lease with Clearwire – negotiated and executed at arm’s length and in good faith – satisfies its interests and complies with all Commission requirements. Pinellas works constructively with Clearwire on an on-going basis to meet its educational needs and address regulatory requirements. Pinellas believes that its interests will be furthered by Clearwire’s continuing network deployment in the 2.5 GHz band, its forthcoming technological advances in connection with the announced conversion of the network to LTE, and Clearwire’s ultimate success in the marketplace, which Pinellas expects to be enhanced by the pending transaction contemplated in this proceeding.

Third, because no valid question has been raised about compliance by Pinellas (or Clearwire) with the Commission’s requirements for EBS, and the Pinellas lease has no relevance to this proceeding, there is no basis for requiring additional data on educational usage or the specific terms and conditions of EBS leases. There is also no reason to suggest that Pinellas or others in the EBS community requires or would benefit by Commission intervention in the EBS leasing process, or by Commission oversight of EBS leases.

Finally, any condition on the approval of the transaction at issue here that requires a divestiture by Clearwire of the Pinellas lease, or termination of that lease, would cause serious hardship and dislocation to Pinellas, to the detriment of its educational goals and services.



**CERTIFICATE OF SERVICE**

I certify that on this 12<sup>th</sup> day of February 2013, I caused true and correct copies of the foregoing Opposition to Petition to Deny to be served by e-mail to the following:

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By:           /s/ Todd D. Gray            
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