

**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 EBS PARTIES TO PETITION TO DENY

Association for Continuing Education, Belmont University, California State University, Sacramento, Dallas County Community College District, Dallas-Fort Worth Hospital Council, Emerson College, Emory University, Georgia Institute of Technology, Georgia State University, Greater Dayton Public Television, Inc., President and Fellows of Harvard College, Johnston Community College/Meredith College ITFS Consortium, Junior College District of Metropolitan Kansas City, Missouri, KCTS Television, Los Rios Community College District, New Jersey Public Broadcasting Authority, Northeastern University, Oregon Public Broadcasting, Portland Community College, Public Television 19, Inc., The Regents of the University of California, Region IV Education Service Center, Richardson Independent School District, Santa Clara County Board of Education, St. Christopher's School of the Church Schools of the Diocese of Virginia, St. Petersburg College, The University of Central Florida, University of Maryland,

University of North Carolina, University of South Florida, The University of Texas Health Science Center at Houston, and Valencia College (collectively, the “EBS Parties”), by their counsel, oppose the Petition to Deny (“Petition”) filed in the referenced proceeding on behalf of the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania (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 between Clearwire Corporation (“Clearwire”) and numerous EBS licensees and the Commission’s requirements for educational use of EBS stations.

Each of the EBS Parties has one or more EBS licenses appearing in Exhibit 1 of the Petition, which erroneously purports to show the absence of EBS educational use in a number of the nation’s largest markets. Thus, while intended to be an attack on Clearwire, the Petition calls into question the EBS Parties’ compliance with FCC’s requirements for EBS excess capacity leasing on their stations.

The EBS Parties hereby seek to set the record straight. In the Petition’s sweeping allegations about the leasing relationship between EBS licensees and Clearwire, the Petitioners do not speak for them. In the Petition’s specific allegations regarding educational use, including educational use relating to the stations of the EBS Parties, the Petitioners are simply wrong. The EBS Parties are in full compliance with FCC educational use requirements.

EBS Parties

The EBS Parties are public and private colleges, universities and university systems, county or regional boards or offices of education, school districts, community colleges, public

broadcasters and non-profit entities. Each of the EBS Parties holds one or more EBS licenses, and each has one or more excess capacity leases with a subsidiary of Clearwire.

EBS Educational Use

Pointing to the substantial service filings of the EBS Parties and others, Petitioners argue that Clearwire has “done virtually nothing to comply with bare minimum educational use obligations for EBS spectrum” and therefore the Commission should not consent to the transfer of control of “Clearwire-Sprint.” Petitioners’ argument is based on the notion 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 that use, the Commission apparently should presume that no educational use took place.¹ This is not correct.

In response to the November 1, 2011 deadline established by the Commission for all EBS stations to demonstrate that they were providing “substantial service,” each of the EBS Parties submitted notifications for their stations listed on Exhibit 1 of the Petition. Those notifications included narrative exhibits that demonstrated compliance with all applicable Commission requirements. The narratives described that channels of each station at issue were deployed and operating in the station’s authorized service area, and that the licensee had satisfied at least one of the substantial service benchmarks (safe harbors) set forth in the Commission’s rules.

In the case of these stations, which operate in major metropolitan areas where Clearwire had deployed an extensive network and was offering commercial wireless service, the notifications relied on the 30% population coverage safe harbor. In these circumstances, it was

¹ 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,” the EBS Parties understand that they as licensees leasing excess EBS capacity are required to meet the educational use standards, and they therefore perceive the Petitioners’ attack on Clearwire on this issue as an unfortunate and unwarranted attack on their compliance with FCC requirements applicable to licensees and, ultimately, their stewardship of their licenses.

not necessary for the EBS Parties to provide specific information or documentation about their compliance with the FCC's minimum educational use requirements, because they were not relying on the educational use safe harbor. It was sufficient for the EBS Parties to certify that the educational use requirements were being met. All of the substantial service filings for the EBS Parties' stations referred to in Exhibit 1 of the Petition did so certify, and the filings were accepted by the Commission, without any objection or challenge by Petitioners or any other party. The Commission actions accepting these filings became final long ago.

As further evidence that there is no issue here, the EBS Parties point out that one of the Petitioners – the Consortium for Public Education (“CFPE”) – also filed a substantial service showing for its EBS station WNC484 in Pittsburg. It relied on the 30% population coverage safe harbor and certified compliance with the educational use requirements, and it did not provide any additional information on the number of Clearwire devices in use, the manner in which they were being used by accredited schools to further their educational mission and the number of hours of use they were generating each week. If one were to credit CFPE's argument, CFPE itself was in violation of the FCC's educational use requirements relating to its station WNC484.

In reality, there is no basis for the suggestion in the Petition that the EBS Parties were not providing the required level of educational use at the time they notified the FCC of their satisfaction of the substantial service requirements.

The EBS Parties understand their regulatory obligations, including the educational use requirements. They have worked successfully with Clearwire to utilize services on the Clearwire system in their markets for purposes that further the educational missions of themselves and/or other accredited schools. The record in this proceeding therefore should reflect that EBS Parties were in compliance with the minimum educational use requirements then, and they are in compliance with the requirements now.

Other Matters

The primary concern of the EBS Parties in this opposition is to address the incorrect assertion by Petitioners that they were not in compliance with their obligations as EBS licensees. However, the Petition makes a number of other arguments and requests a variety of remedies, some of which fundamentally touch on the EBS Parties' licenses, their leasing relationships with Clearwire, and other matters of interest or concern. Without belaboring these issues, given their flimsy basis and silly nature, the EBS Parties do want the Commission to understand their views on the following:

First, the Petitioners do not represent the EBS community in this or any other matter and their views about Clearwire do not represent the views of the EBS Parties or, to their knowledge, those of the EBS community in general. The Petitioners endorse 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 EBS Parties' leases with Clearwire – negotiated and executed at arm's length and in good faith -- satisfy their interests and comply with all Commission requirements. The EBS Parties work constructively with Clearwire on an on-going basis to meet their educational needs and address regulatory requirements. They believe that their 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 success in the

marketplace, which the EBS Parties expect to be enhanced by the pending transaction contemplated by this proceeding.

Third, given that all regulatory requirements relating to their EBS stations and leases have been satisfied, and no valid question has been raised by Petitioners with respect to compliance by the EBS Parties (or Clearwire) with the Commission's requirements for EBS, there is no basis for requiring additional information on educational usage accounts that licensees may have with Clearwire, or on the specific terms and conditions of EBS leases. There is also no reason to suggest that the EBS community requires or would benefit by Commission intervention in the EBS leasing process or in licensees' relationships with their lessees, or by Commission oversight of the terms of EBS leases.

Fourth, each EBS licensee, operating under its own applicable state's laws addressing the holding and disposition of charitable assets, and its own negotiated and approved lease, is in the best position to consider and address issues (if any) that might arise out of the transfer of indirect control to a foreign corporation of the contractual right to use leased EBS capacity. The Petition does not allege much less document that the transaction here actually violates any state's laws relating to charitable assets, and even if there were to be an issue with respect to any EBS licensee and lease in any given state, the Commission would have no role in the determination of the issue or its remedy.

Finally, any condition on the approval of the transaction at issue here that requires a divestiture of EBS assets or termination of EBS leases would cause unimaginable hardship and dislocation to the EBS Parties and the entire EBS licensee community, and would result in serious harm to the cause of education in the United States. Petitioners appear blithely to presume that, if Clearwire were forced to divest EBS leases, or if the Commission were to force the termination of EBS leases, some other entity would be willing and able to take over and/or

replace all such leases, honor their financial and service obligations, seamlessly deploy duplicative network facilities on the affected spectrum, and offer the same future technological and service advances that are contemplated to arise out of the transaction at issue here. Petitioners offer no basis to suggest that this could or would happen, and the EBS Parties believe the likelihood is infinitesimally small that any such alternative entity or entities will be willing and able to take over and use even major portions of EBS spectrum leased to Clearwire across the country. Even if EBS licensees could find alternative lessees for their spectrum, and those lessees offered the same financial and service terms and the same capability to construct and operate facilities, the disruption to existing relationships and activities in the transition from one lease and operational platform to another would be enormous. Furthermore, if such alternative lessees did not operate a single, nationwide wireless platform such as the one operated by Clearwire, the replacement service would be significantly less useful. For these reasons, Petitioners' urging the Commission in essence to "blow up" the existing Clearwire - EBS ecosystem is the height of irresponsibility.

Conclusion

For the foregoing reasons, the EBS Parties oppose the Petition to Deny filed by the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania, and they reiterate their compliance with Commission requirements relating to educational use of their EBS stations.

Respectfully submitted,

ASSOCIATION FOR CONTINUING
EDUCATION

BELMONT UNIVERSITY

CALIFORNIA STATE UNIVERSITY,
SACRAMENTO

DALLAS COUNTY COMMUNITY COLLEGE
DISTRICT

DALLAS –FORT WORTH HOSPITAL COUNCIL

EMERSON COLLEGE

EMORY UNIVERSITY

GEORGIA INSTITUTE OF TECHNOLOGY

GEORGIA STATE UNIVERSITY

GREATER DAYTON PUBLIC TELEVISION,
INC.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE

JOHNSTON COMMUNITY
COLLEGE/MEREDITH COLLEGE ITFS
CONSORTIUM

JUNIOR COLLEGE DISTRICT OF
METROPOLITAN KANSAS CITY, MISSOURI

KCTS TELEVISION

LOS RIOS COMMUNITY COLLEGE DISTRICT

NEW JERSEY PUBLIC BROADCASTING
AUTHORITY

NORTHEASTERN UNIVERSITY

OREGON PUBLIC BROADCASTING

PORTLAND COMMUNITY COLLEGE

PUBLIC TELEVISION 19, INC.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

REGION IV EDUCATION SERVICE CENTER

CERTIFICATE OF SERVICE

I certify that on this 12th 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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