

**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)	

COMMENTS OF EBS LICENSEES SUPPORTING VERIZON REQUEST

The Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania, which have filed a Petition to Deny (“Petition”)¹ in the above-referenced proceeding (“the EBS Licensees”), hereby submit these comments in response to the Comments of Verizon Wireless (“VZ Comments”), filed January 28, 2013, in the proceeding.

The VZ Comments request the Commission include all 194 MHz of 2.5 GHz spectrum, with exception of 5% of the EBS spectrum under lease to Clearwire, in the Commission’s spectrum screen, as part of the review of the above-captioned transaction. The EBS Licensees agree with and support the VZ request.

In their Petition, the EBS Licensees listed all EBS licenses leased to Clearwire in 20 Clearwire commercially deployed markets representing a covered population of 50 million

¹ Petition to Deny, filed January 28, 2013.

Americans.² The substantial service exhibits of all the Clearwire lessors in these markets indicate that Clearwire has deployed a mobile wireless system on the EBS spectrum in these markets and there are numerous mobile telephony devices that may be used on the network. These substantial service filings clearly demonstrate not only the potential of mobile use of EBS for commercial mobile wireless services, but that there is in fact widespread mobile wireless use (including mobile telephony) of EBS spectrum across Clearwire deployed markets as has been reported by Clearwire to the Commission.³

The only seeming exceptions to mobile use by Clearwire on the EBS spectrum it leases in its commercially deployed markets are the limited cases where a small number of EBS lessors have specifically reserved their mid-band “4” channel for video only usage. Other than these rare cases, there is virtually no other publicly known video only usage of EBS spectrum on the EBS mid-band in Clearwire commercially deployed markets (including all markets where Clearwire has deployed cell sites on which mobile users can “roam” but that may not yet be launched to the public)⁴. As such, there is also no reason to expect any additional video only usage of the EBS mid-band will occur in the future. To be sure, Clearwire can provide the Commission with the details of any of the limited number of its EBS leases in which the lessor has reserved any video only usage rights on mid-band channels.

² Petition at pages 6-7, Exhibit 1. For clarification, Exhibit 1 incorrectly included Tarrant County College (“Tarrant”), licensee of WHR 506, Fort Worth, TX, as a Clearwire EBS lessor. Tarrant is leasing its EBS channels to Nextwave.

³ As describe in the Petition, in the vast majority of cases, Clearwire deploys a system utilizing 100% of the EBS spectrum under lease, and therefore, even the 5% that is supposed to be “reserved” for educational use, is also currently commercially deployed for mobile services. Petition at 9.

⁴ Such markets would also include all non launched markets in which Clearwire has deployed 1 or more cell sites for substantial services purposes, but in which markets users of Clearwire and Sprint branded 4G WiMAX services can roam with their devices notwithstanding Clearwire is not marketing or selling services in these markets.

None of the Commission's reasons or concerns for excluding EBS from the spectrum screen in approving the merger of Sprint and Clearwire's 2.5 GHz spectrum assets in 2008 has been demonstrated to be valid.⁵ Clearwire has failed to commercially deploy services on the EBS (or any 2.5GHz) spectrum to 2/3 of the U.S. population since Commission approval of that transaction. This has resulted in very limited educational usage of EBS spectrum on a nationwide basis (alone based on the fact the network covers only roughly 1/3 of the U.S. population).⁶ Thus, it can't now be claimed that allowing foreign control of the U.S. educational spectrum will somehow enhance educational usage of EBS and therefore market power over the spectrum should be further confirmed and concentrated in the proposed foreign controlled entity. Even if it could be assumed that a Softbank controlled Sprint will eventually deploy a commercial mobile network on all the EBS spectrum, it still does not follow that educational use of that spectrum will ever equate to more than 5%, maximum. The remainder (95%) will continue to be used for mobile wireless and therefore that amount of EBS spectrum should be subject to the spectrum screen.

Divestiture would only enhance competition for the EBS spectrum (once again)⁷ and provide a new market for EBS spectrum licensees (not under lease, or long term lease with Clearwire), to pursue new leasing arrangements in a competitive market.⁸ Contrary to the

⁵ In re Sprint Nextel Corporation and Clearwire Corporation, WT Docket 08-94, Memorandum Opinion and Order, released November 7, 2008, at para. 71.

⁶ See Clearwire Presentation at 3, footnote 11 infra.

⁷ Prior to the approval of the Clearwire-Sprint merger transaction, there were multiple parties, in addition to Sprint and Clearwire, competing for EBS spectrum leases in a competitive spectrum market. Post approval of that transaction, Clearwire has exercised monopsony power as a single buyer over the 2.5GHz spectrum market.

⁸ Although Clearwire has the vast majority of U.S. EBS spectrum leased and under its control, the EBS Licensees estimate there exists approximately 7 billion MHz pops of EBS spectrum nationwide either not under lease to

concerns in the 2008 M&O, a competitive market where there exists more than one 2.5 GHz operator will again allow EBS licensees to be in a negotiating position to secure more favorable lease terms for their EBS spectrum (as the climate existed prior to the Sprint-Clearwire 2.5 GHz combination).⁹

To this end, Dish Network (Echostar) has recently expressed definitive interest in acquiring a substantial portfolio of 2.5 GHz spectrum from Clearwire (including EBS)¹⁰ – so there is clearly at least one other nationwide competitor interested in pursuing currently un-leased or to be divested 2.5 GHz EBS spectrum right now. Further, with the global standardization of 2.5 GHz spectrum for TDD-LTE deployments,¹¹ if there was certainty regarding a divestiture (forced or voluntary and without restriction to Sprint rights of first refusal or other Sprint blocking rights) of a large amount of 2.5GHz EBS spectrum, it follows that other national, regional, and local wireless companies may also desire to pursue available 2.5 GHz EBS spectrum that is currently un-leased or to be divested.¹² Considering the lack of nationwide

Clearwire (approximately 2 billion MHz pops) or that is not subject to long term, 30 year, *de facto* leases with Clearwire (approximately 5 billion MHz pops).

⁹ The EBS Licensees intend to show additional examples of abuse of market power by Clearwire (including issues relating to Clearwire’s character as an EBS lessee) since 2009 with respect to EBS leasing issues in their upcoming Reply in this proceeding to be filed by February 25, 2013.

¹⁰ See Clearwire Form 8K, Current Report, filed with the Securities Exchange Commission, January 8, 2013 (Press Release: Clearwire Corporation Provides Transaction Update). See also TMF Associates discussion regarding potential Clearwire spectrum subject to Dish proposal at: <http://tmfassociates.com/blog/2013/01/>.

¹¹ See Clearwire Presentation to Goldman Sachs 21st Annual Communacopia Conference, presented September 19, 2012, at Slides 10-12 (available at <http://corporate.clearwire.com/events.cfm>) (“Clearwire Presentation”).

¹² While Clearwire claims to have engaged in exhaustive efforts since 2011 to sell spectrum, these efforts cannot be equated to a forced (or voluntary) divestiture where all interested wireless operators can participate and there is absent negative influence over the process by Clearwire’s parent, Sprint Nextel Corporation (“Sprint”), through potential or threatened enforcement of their strategic agreements. See generally Clearwire’s Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, filed with the SEC, February 1, 2013 (“Proxy”).

deployment of 2.5 GHz spectrum, EBS licensees would not be prejudiced by any divestitures and there would likely be substantially more prompt deployment of divested spectrum put in the hands of wireless operators in obvious greater need of spectrum capacity than Clearwire (and/or Sprint).¹³

Any concerns regarding the geographic licensing of EBS spectrum as a reason not to include it in the spectrum screen are overblown. Clearwire's EBS substantial service exhibits (and associated maps) demonstrate their deployed commercial networks are almost always completely covered by the (originally site licensed) EBS GSA(s) covering the urban market, including actual network coverage of less population than is located within the EBS GSA. Further, Clearwire has proven the substantial utility to any wireless operator having 2.5 GHz EBS spectrum covering a market population center to, at minimum, provide network capacity for high capacity traffic offload.¹⁴ Even without licensing of EBS whitespace (which should eventually occur), any mobile wireless operator can make very efficient use of EBS spectrum today to enhance its system capacity over at least the vast majority of the most densely populated areas of the markets covered by its network.

Finally, it is critically important to note that since the Commission's approval of the Clearwire-Sprint 2.5 GHz merger transaction in very late 2008, Clearwire has amassed very substantial additional 2.5 GHz EBS spectrum holdings through long term *de facto* leases. From

In the Proxy, Clearwire discusses their efforts, subject to terms of their agreements with Sprint, to facilitate a spectrum sale during 2011 and 2012.

¹³ Considering Clearwire's plans to shut down its WiMAX network where currently deployed on a limited basis, there is a greater likelihood of disruption to EBS licensees by not having their spectrum divested to another wireless operator which will most likely have a need to redeploy any such spectrum far sooner than would a post transaction Sprint. See Petition at footnote 7.

¹⁴ Clearwire Presentation at Slides 3, 5 and 9.

2009 through 2012, in its commercially deployed markets alone, Clearwire has obtained more than 100 new long term *de facto* leases representing approximately 4.5 billion MHz pops of EBS spectrum.¹⁵ Clearwire's acquisition of very substantial additional EBS spectrum capacity and long term consolidation of the EBS spectrum (and 2.5 GHz spectrum) since 2009 provides the most compelling reason the Commission must now revisit its analysis of whether EBS should be subject to the spectrum screen in this transaction, regardless of any prior Commission determinations on this issue. Failure of the Commission to carefully revisit and review this issue now – as part of this proceeding – would be contrary to the public interest.

¹⁵ Exhibit 1 contains a list of all the new long term *de facto* EBS leases Clearwire has obtained for EBS spectrum in its commercially deployed markets alone after its transaction with Sprint was approved in late 2008.

Conclusion

For the foregoing reasons and the reasons indicated in the VZ Comments, the Commission should include EBS in its spectrum screen as part of its competitive analysis in this proceeding.¹⁶

Respectfully submitted,

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February 12, 2013

¹⁶ If the Commission determines it may only make the determination whether EBS spectrum should be subject to the spectrum screen as part of its *Mobile Spectrum Holdings, Notice of Proposed Rulemaking*, in WT Docket 12-269 (“Spectrum Screen Review Proceeding”), then the public interest requires the Commission must hold in abeyance any action with respect to the applications subject to the above captioned proceeding until after issuance of an Order in the Spectrum Screen Review Proceeding. In such event, the EBS Licensees are filing these comments in Docket 12-269 for consideration in the Spectrum Screen Review Proceeding. The parties to the applications in this proceeding should not be able to end around an ultimate determination regarding inclusion of EBS spectrum in the spectrum screen simply because they timed the filing of their applications before Commission action in the pending Spectrum Screen Review Proceeding.

EXHIBIT

1

<u>Call sign</u>	<u>Major GSA Market</u>	<u>PSA centerpoint town</u>	<u>St</u>	<u>Channels</u>	<u>CLWR Deployed</u>	<u>Channel MHz</u>	<u>ULS Long Term De Facto Lease</u>	<u>Lessee</u>
WLX974	Los Angeles, CA	Ridgecrest	CA	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHM937	Los Angeles, CA	Riverside	CA	B1	Yes	5.5	Yes	clwr
WHG228	Los Angeles, CA	Santa Paula	CA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WLX367	Los Angeles, CA	Riverside	CA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WHR502	Los Angeles, CA	Palmdale	CA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WHR664	Los Angeles, CA	Chatsworth	CA	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WHG229	Los Angeles, CA	Mount Wilson	CA	F1,F2,F3,F4	Yes	22.5	Yes	clwr
WHR929	Los Angeles, CA	Riverside	CA	G1,G3,G4	Yes	17.0	Yes	clwr
WLX873	Merced, CA	Merced	CA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WND211	Modesto, CA	Ripon	CA	B2,B3,B4	Yes	17.0	Yes	clwr
WLX735	Sacramento, CA	Sacramento	CA	D4	Yes	6.0	Yes	clwr
WHR772	Sacramento, CA	Sacramento	CA	G1,G2,G3,G4	Yes	22.5	Yes	clwr
KZB23	San Francisco, CA	Mount San Bruno	CA	B1,B2,B3,B4	Yes	22.5	Yes	clwr
KZB22	San Francisco, CA	Mount San Bruno	CA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WNC824	San Francisco, CA	Mount San Bruno	CA	D1,D2,D3	Yes	16.5	Yes	clwr
KZB24	San Francisco, CA	Los Altos	CA	D1,D2,D3,D4	Yes	22.5	Yes	clwr
KGG38	San Francisco, CA	Los Altos	CA	E1,E2,E3,E4	Yes	22.5	Yes	clwr
WHR466	San Jose, CA	San Jose	CA	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR467	San Jose, CA	San Jose	CA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
KZB25	San Jose, CA	San Jose	CA	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WLX864	Visalia, CA	Visalia	CA	A3,A4	Yes	11.5	Yes	clwr
WLX526	Denver, CO	Denver	CO	C4	Yes	6.0	Yes	clwr
WLX531	Hartford, CT	New Britain	CT	A3,A4	Yes	11.5	Yes	clwr
WNC678	Jacksonville, FL	Jacksonville	FL	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WOF43	Tampa, FL	Tampa	FL		1 Yes	6.0	Yes	clwr
WLX227	Tampa, FL	Oldsmar	FL	A1,A4	Yes	11.5	Yes	clwr
WFW689	Tampa, FL	Oldsmar	FL	A2,A3	Yes	11.0	Yes	clwr
WNC859	Tampa, FL	Oldsmar	FL	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WHF223	Tampa, FL	Tampa	FL	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WHR518	Tampa, FL	Oldsmar	FL	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WLX226	Tampa, FL	Oldsmar	FL	D1,D4	Yes	11.5	Yes	clwr
WGV752	Tampa, FL	Oldsmar	FL	D2,D3	Yes	11.0	Yes	clwr
WNC860	Tampa, FL	Oldsmar	FL	G1,G2,G3,G4	Yes	22.5	Yes	clwr
KD54001	Tampa, FL	Tampa	FL	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WHB828	Tampa, FL	Tampa	FL	G1,G2,G3,G4	Yes	22.5	Yes	clwr
KVI65	Atlanta, GA	Atlanta	GA	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR716	Honolulu, HI	Honolulu	HI	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WHR714	Honolulu, HI	Waialua	HI	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WLX813	Boise, ID	Boise	ID	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR688	Boise, ID	Boise	ID	B1,B2	Yes	11.0	Yes	clwr
WHR689	Boise, ID	Boise	ID	D3,D4	Yes	11.5	Yes	clwr
WHG269	Chicago	Chicago	IL	G1,G2,G3,G4	Yes	22.5	Yes	clwr
KG266	Chicago, IL	Chicago	IL	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR498	Chicago, IL	Chicago	IL	B3,B4	Yes	11.5	Yes	clwr
WBM648	Chicago, IL	Chicago	IL	E1,E2,E3,E4	Yes	22.5	Yes	clwr
WHR850	Sugar Grove, IL	Sugar Grove	IL	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WND289	University Park, IL	University Park	IL	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WLX476	University Park, IL	University Park	IL	B3,B4	Yes	11.5	Yes	clwr
KQT47	Boston, MA	Boston	MA	A1,A2	Yes	11.0	Yes	clwr
WQCU376	Boston, MA	Boston	MA	A3,A4	Yes	11.5	Yes	clwr
WHR758	Boston, MA	Boston	MA	C1	Yes	5.5	Yes	clwr
WBB421	Boston, MA	Boston	MA	C2,C3,C4	Yes	17.0	Yes	clwr
KVQ24	Boston, MA	Boston	MA	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WND258	Boston, MA	Boston	MA	D1,D2,D3,D4	Yes	22.5	Yes	clwr
KLC85	Boston, MA	Boston	MA	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WNC708	Baltimore, MD	Baltimore	MD	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR807	Baltimore, MD	Baltimore	MD	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WLX789	Baltimore, MD	Baltimore	MD	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WHR636	Minneapolis, MN	Minneapolis	MN	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WIG34	Minneapolis, MN	Minneapolis	MN	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WHR531	Kansas City, MO	Kansas City	MO	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHG332	Saint Louis, MO	Saint Louis	MO	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WLX759	Saint Louis, MO	Saint Louis	MO	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WHR535	Charlotte, NC	Charlotte	NC	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR821	New York, NY	Montclair	NJ	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WLX250	Trenton, NJ	Trenton	NJ	C2,C3,C4	Yes	17.0	Yes	clwr

<u>Call sign</u>	<u>Major GSA Market</u>	<u>PSA centerpoint town</u>	<u>St</u>	<u>Channels</u>	<u>CLWR Deployed</u>	<u>Channel MHz</u>	<u>ULS Long Term De Facto Lease</u>	<u>Lessee</u>
WHR822	Trenton, NJ	Warren Township	NJ	G1,G2,G3,G4	Yes	22.5	Yes	clwr
KNZ69	New York, NY	Manhattan	NY	B1,B2,B3,B4	Yes	22.5	Yes	clwr
KZE20	New York, NY	Queens	NY	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WHR691	New York, NY	Queens	NY	B2	Yes	5.5	Yes	clwr
KNU43	New York, NY	Long Island	NY	D1,D2,D3,D4	Yes	22.5	Yes	clwr
KNZ70	New York, NY	Queens	NY	F1,F2,F3,F4	Yes	22.5	Yes	clwr
KVS31	New York, NY	Brooklyn	NY	F1,F2,F3,F4	Yes	22.5	Yes	clwr
WLX613	Rochester, NY	Fairport	NY	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WLR929	Syracuse, NY	Syracuse	NY	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WLX840	Syracuse, NY	Syracuse	NY	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WHR584	Cincinnati, OH	Cincinnati	OH	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WLX592	Columbus, OH	Columbus	OH	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR515	Portland, OR	Portland	OR	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WLX566	Philadelphia, PA	Philadelphia	PA	B3,B4	Yes	11.5	Yes	clwr
WQFY338	Pittsburgh, PA	Pittsburgh	PA	B1,B2,B3	Yes	16.5	Yes	clwr
WLX295	Nashville, TN	Nashville	TN	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WLX201	Austin, TX	Austin	TX	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WHR882	Dallas, TX	Dallas	TX	A3,A4	Yes	11.5	Yes	clwr
WEF69	Dallas, TX	Dallas	TX	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WHR831	Dallas, TX	Dallas	TX	G4	Yes	6.0	Yes	clwr
WNC990	Fort Worth, TX	Carrollton	TX	C3,C4	Yes	11.5	Yes	clwr
WHR881	Fort Worth, TX	Fort Worth	TX	D1,D2,D3,D4	Yes	22.5	Yes	clwr
KRZ68	Houston, TX	Houston	TX	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WNC208	Houston, TX	Houston	TX	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WLX308	Lubbock, TX	Lubbock	TX	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WHR920	San Antonio, TX	San Antonio	TX	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WHR624	Salt Lake City, UT	Salt Lake City	UT	B1	Yes	5.5	Yes	clwr
WLX667	Salt Lake City, UT	Salt Lake City	UT	D1,D2,D3,D4	Yes	22.5	Yes	clwr
WNC988	Salt Lake City, UT	Salt Lake City	UT	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WHR972	Richmond, VA	Independent Hill	VA	D1,D2	Yes	11.0	Yes	clwr
WNC602	Kennewick, WA	Kennewick	WA	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WNC916	Kennewick, WA	Kennewick	WA	G1,G2,G3,G4	Yes	22.5	Yes	clwr
WHR528	Seattle, WA	Seattle	WA	A1,A2,A3,A4	Yes	22.5	Yes	clwr
WHR622	Seattle, WA	Seattle	WA	B1,B2,B3,B4	Yes	22.5	Yes	clwr
WNC381	Seattle, WA	Seattle	WA	C1,C2,C3,C4	Yes	22.5	Yes	clwr
WLX807	Yakima, WA	Yakima	WA	A1,A2,A3,A4	Yes	22.5	Yes	clwr

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February 2013 a copy of the foregoing *Comments* was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via First Class and electronic mail:

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