

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

In the Matter of)
)
Applications of Sprint Nextel Corporation,) IB Docket No. 12-343
Transferor)
)
SOFTBANK CORP., and Starburst II, Inc.,)
Transferees)
)
for Consent To Transfer of Control of)
Licenses and Authorizations)

**REPLY COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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I. INTRODUCTION

Pursuant to the pleading cycle established by the Federal Communications Commission (“FCC” or “Commission”),¹ the New Jersey Division of Rate Counsel (“Rate Counsel”), an agency representing New Jersey consumers,² files these reply comments responding to the filing by Sprint Nextel Corporation (“Sprint”), Softbank Corporation (“Softbank”) and Starburst II,

¹ / Public Notice DA 12-1924, 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, IB Docket No. 12-343, November 30, 2012. The FCC subsequently revised the pleading cycle to reflect Sprint’s “proposed acquisition of de facto control of Clearwire.” Public Notice DA 12-2090, SoftBank and Sprint File Amendment to Their Previously Filed Applications to Reflect Sprint’s Proposed Acquisition of De Facto Control of Clearwire, Revised Pleading Cycle, IB Docket No. 12-343, December 27, 2012 (“December Public Notice”).

² / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.

Inc. (collectively, the “Applicants”)³ and several others, which submitted oppositions to the comments and petitions to deny.⁴

II. STATUS OF TRANSACTION

On January 28, 2013, the Department of Justice (“DOJ”), “including the Federal Bureau of Investigation (“FBI”), and in concurrence of the Department of Homeland Security (“DHS”)” sent a letter to the FCC asking it to “defer action” on the proposed transaction.⁵ The DOJ is reviewing the proposed transaction and any impacts it may have on “national security, law enforcement, and public safety issues.”

On February 4, 2013, after Rate Counsel submitted comments, the Applicants submitted an S-4.⁶ The preliminary Proxy Statement - Prospectus details the Agreement and Plan of Merger dated October 15, 2012 and amended November 29, 2012.

III. ISSUES RAISED IN COMMENTS AND PETITIONS TO DENY

Comments and petitions to deny,⁷ including those submitted by Rate Counsel, filed January 28, 2013, raised the following concerns and topics:

^{3/} Sprint Nextel Corporation, Softbank Corp., Starburst I, Inc., and Starburst II, Inc., *Joint Opposition to Petitions to Deny and Reply to Comments*, February 12, 2013 (“Joint Opposition and Reply”).

^{4/} The Catholic Television Network and the National EBS Association; Clarendon Foundation, Inc.; Tarrant County College; School Board of Pinellas County Florida; EBS; The Source for Learning, Inc.; and Hispanic Information and Telecommunications Network, Inc.

^{5/} Letter from Jennifer Rockoff, Attorney Advisor, National Security Division, U.S. Department of Justice to Marlene H. Dortch, Federal Communications Commission, Re Softbank/Sprint IB Docket No. 12-343, January 28, 2013.

^{6/} Starburst II, Inc. Form S-4 Registration Statement as filed with the Securities and Exchange Commission on February 4, 2013 (“S-4”).

^{7/} The following entities submitted comments or petitions to deny: Communications Workers of America; The Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania; Crest Financial Limited; The Greenlining Institute; Line Systems, Inc.; New Jersey Division of Rate Counsel; nWire, LLC, Pac-West Telecomm, Inc., and Tex-Link Communications, Inc. (the “CLEC Petitioners”); and Verizon Wireless.

- Impact of the proposed transaction on competition in wireless markets;
- Applicants' plans for investing in Sprint's network;
- Relationship of the proposed transaction to the FCC's ongoing wireless proceedings;
- Access of low-income households to advanced telecommunications services;
- Applicants' post-transaction intentions regarding the CTIA Code of Conduct (concerning bill shock); and
- Net neutrality.

Impact of the proposed transaction on competition in the wireless market

Rate Counsel reiterates that the proposed transaction has the potential to increase the level of competition in wireless markets, which would have the consequence of benefiting consumers through a greater diversity of wireless services and market pressure on wireless rates for voice and data usage.⁸ As noted by the Applicants:

Tellingly, not a single competitor of Sprint or Clearwire raises any concern that these transactions will harm competition. On the contrary, even parties that often oppose wireless transactions, such as the New Jersey Division of Rate Counsel (the "NJ Rate Counsel") and the Greenlining Institute ("Greenlining"), recognize the potential of these transactions to increase competition and consumer welfare.⁹

Rate Counsel's initial comments clearly demonstrate that the proposed transaction will not increase concentration in the wireless market and may produce a contender that may have the resources to erode AT&T's and Verizon Wireless' market shares, thus breaking the market power of the current wireless duopoly.¹⁰

The Applicants' plans for investing in Sprint's network

Although the Applicants state that planned the infusion of capital is not speculative, the Applicants do not provide specific information demonstrating that the planned investment will

^{8/} See Rate Counsel Initial Comments, at 6-16.

^{9/} Joint Opposition and Reply, at ii. See, also, *id.*, at 3.

^{10/} See, also, Greenlining, at 1.

lead to measurable network improvements and technology that delivers benefits to consumers. The Applicants state: “The NJ Rate Counsel, apparently misapprehending the nature of the transactions, is concerned that SoftBank’s \$8 billion cash infusion is insufficiently firm. To be clear, SoftBank is contractually committed to make that contribution and already has provided \$3.1 billion to Sprint in the form of a convertible bond.”¹¹ The Applicants, in reply to Rate Counsel’s recommendation that the FCC adopt a timetable for investment, further state:

SoftBank’s \$8 billion capital infusion, however, is not simply an intention. It is a firm commitment. In fact \$3.1 billion of this amount already has been provided to Sprint in the form of a convertible bond, and SoftBank is contractually committed to provide the remaining \$4.9 billion when the SoftBank/Sprint Transaction closes. There is thus no need for the Commission to seek any additional commitment or establish a timetable for the investment.¹²

The Applicants fail, however, to provide detail about their specific investment plans, including, for example, the timing of their proposed deployment of 4G. Therefore, Rate Counsel agrees with Communications Workers of America that: “The FCC should not approve the proposed transaction unless and until Sprint commits to concrete build-out requirements fleshing out its vague promises of network enhancement.”¹³

The investment in Sprint’s network is still speculative, though the cash infusion is not: Applicants promise that the capital infusion will enable Sprint to reduce borrowing costs and “enhanc[e] its ability to raise additional capital.”¹⁴ Indeed, the cash infusion will strengthen the company’s balance sheet. The Applicants state:

SoftBank’s investment directly addresses Sprint’s current “highly leveraged”

¹¹ / Joint Opposition and Reply, at ii.

¹² / *Id.*, at 11, cites omitted.

¹³ / Communications Workers of America, at i.

¹⁴ / Joint Opposition and Reply, at 11.

balance sheet, which causes Sprint's current borrowing costs to be above those currently incurred by AT&T and Verizon Wireless. SoftBank's investment is expected to strengthen Sprint's balance sheet, resulting in "greater financial stability and lower borrowing costs." Sprint, by any measure, will be in a stronger financial position as a result of the transaction with SoftBank.¹⁵

In its S-4, the Applicants describe Sprint's network modernization plans, including among other things, its plans to deploy a 4G mobile broadband network. The S-4 states:

Sprint is implementing Network Vision, which is a multi-year infrastructure initiative intended to reduce operating costs and provide subscribers with an enhanced network experience by improving voice quality, coverage and data speeds, while enhancing network flexibility and improving environmental sustainability. The focus of the plan is on upgrading the existing Sprint platform and providing flexibility for new 4G technologies, including LTE.¹⁶

Rate Counsel reiterates its recommendation that the Applicants set forth specific measurable milestones for its roll-out of its 4Gmobile broadband network.

Ongoing FCC Proceedings

Rate Counsel reiterates its concern that the FCC should examine the wireless industry on an ongoing basis and that several specific issues merit attention (discussed in detail in Rate Counsel's initial comments at pages 17 through 23), including: special access, network neutrality, and access to data.¹⁷

Proposed Conditions

The access of low-income households to advanced telecommunications services

Rate Counsel continues to have concerns about low-income consumers' access to advanced

^{15/} *Id.*, at 12.

^{16/} S-4, at 57.

^{17/} Rate Counsel Initial Comments, at 17-23

technology. These concerns are also expressed by others.¹⁸ Sprint and Softbank assert that “There is no basis to assume that the Transactions will have any adverse effect on the availability of wireless services to low-income consumers.”¹⁹ The Applicants also state:

The NJ Rate Counsel suggests that the Applicants “could commit to implement” a program to provide subsidized wireless Internet access services to income-eligible families along the lines of the program offered by Comcast Corporation as part of its transaction with NBC Universal. As the NJ Rate Counsel notes, that program was instituted in the midst of a controversial transaction that resulted in the imposition of numerous conditions, a far cry from the instant transactions. The NJ Rate Counsel does not propose the program as a condition of the Transactions, nor would such a condition be warranted.²⁰

The Applicants’ response to Rate Counsel’s recommendation does not counter the fact that the expansion of wireless Internet access to low-income households would enhance the benefits of the proposed transaction. For the reasons outlined in Rate Counsel’s initial comments at pages 26 through 28, the Applicants would enhance the public interest by including a commitment to provide wireless broadband through a program similar to Comcast’s Essentials program. As highlighted by Greenlining Institute: “Mobile wireless service is particularly important to low-income consumers and communities of color, as it may be their only access to broadband.”²¹

Bill Shock

Bill shock has emerged as a well-recognized consumer concern in wireless markets. The acquisition of a United States company by a foreign one raises transaction-specific concerns: United States companies have a well-established history of working with U.S. industry groups such as CTIA and working with U.S. regulators to remedy market imperfections. SoftBank’s

¹⁸/ Greenlining, at 8-9.

¹⁹/ Joint Opposition and Reply, at 10.

²⁰/ *Id.*, at footnote 30, cite omitted.

²¹/ Greenlining Institute, at 8.

acquisition of Sprint puts that first-hand experience with U.S. regulators' and consumers' expectations at risk. Therefore, it is entirely appropriate for the FCC to condition its approval of the transaction on SoftBank's agreement to abide by the CTIA Code of Conduct. The Applicants contend that this concern "has no nexus to the Transactions and, thus, should not be considered as part of this proceeding To the extent that the matters raised by Greenlining and others warrant consideration by the FCC, they should be addressed in industry-wide rulemaking proceedings."²² Of course, the bill shock proceeding was specifically halted because of an industry agreement. Rate Counsel is hopeful that the Applicants would support and indeed commit to abide by industry-wide voluntary agreements where possible so as to avoid the need for regulatory fixes.

New Investment/LTE Rollout

As discussed above, Rate Counsel continues to believe that the Applicants should submit a timetable detailing the actual investment in the network that will result from the \$8 billion cash infusion.²³ This should specifically include a commitment to rollout 4G LTE.²⁴

^{22/} Joint Opposition and Reply, at 53-54, cites omitted.

^{23/} Rate Counsel Initial Comments, at 24.

^{24/} *Id.*

IV. CONCLUSION

Rate Counsel supports the Commission's approval of the proposed transaction subject to the conditions and recommendations set forth in this reply and in initial comments.

Respectfully submitted,

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