Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of)	
Applications of Sprint Nextel Corporation, Transferor)) IB I	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)	

REPLY COMMENTS OF VERIZON WIRELESS

The record demonstrates that the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") spectrum should be added to the spectrum screen when the Commission acts on this transaction. EBS licensees confirm, and the Applicants do not contest, that BRS/EBS spectrum is suitable and available for mobile services – the standard for inclusion – and in fact is *already* widely deployed for commercial mobile use today. The Commission should thus include an additional 188.125 MHz in the screen – all of the remaining BRS spectrum and all but the five percent of EBS spectrum that is committed to educational use. ¹ Indeed, it would be arbitrary for the Commission *not* to add this spectrum now, given that the

¹ See Comments of Verizon Wireless, IB Docket No. 12-343, at 8-10 (Jan. 28, 2013) ("Verizon Wireless Comments"); Petition to Deny of the Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania, IB Docket No. 12-343, at 1 (Jan. 28, 2013) ("EBS Licensees Petition"); see also Petition to Deny of Taran Asset Management, IB Docket No. 12-343, at 9 (Jan. 19, 2013) ("Taran Petition"); Request to Hold Proceeding in Abeyance of DISH Network L.L.C., IB Docket No. 12-343, at 4-5 (Jan. 16, 2013).

spectrum clearly meets the test for inclusion, and given the Commission's action in a license transfer decision just two months ago to add spectrum being transferred to the screen upon a finding that the spectrum was also suitable and available for mobile services.

Tellingly, the Applicants do not apply the Commission's "suitable and available" standard for determining whether spectrum is included in the screen.² They would be hard pressed to make a case that BRS/EBS spectrum does not qualify, given that Clearwire has broadly deployed BRS/EBS spectrum for commercial mobile services, and that the Applicants themselves have repeatedly stated that this same spectrum will enable them to vigorously compete in the mobile services market. Just two weeks ago, Sprint's Chairman and CEO told investors: "in December, we announced the proposed acquisition of the shares we don't own in Clearwire, which would give Sprint complementary spectrum to our low and medium frequency spectrum assets.... We look forward to closing these transactions, and we believe that Sprint will emerge as a more competitive company."³

EBS licensees confirm that Clearwire is making substantial use of EBS spectrum today. For example, EBS licensees explained that "commercial entities such as Clearwire are able to use EBS spectrum for nationwide wireless broadband deployments." Other EBS licensees observed that Clearwire has access to "nearly all EBS spectrum rights" via long-term spectrum

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² "Suitability" is determined by "whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its use for the relevant mobile service." *See Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, 11722 ¶ 26 (2012). Spectrum is "available" if it is "fairly certain that it will meet the criteria for suitable spectrum in the near term." *Id*.

³ Sprint Nextel Corporation Webcast, 4Q Sprint Earnings Call (Feb. 7, 2013 at 8:00 AM ET) at 8:17 and 16:33, http://services.choruscall.com/links/sprint130207.html.

⁴ See Opposition to Petition to Deny of The Catholic Television Network and the National EBS Association, IB Docket No. 12-343, at 5-6 (Feb. 11, 2013).

leases,⁵ which typically give Clearwire the exclusive right "to use all of the capacity" other than that required to be "set aside for Licensee's use." EBS licensees have heavily relied on Clearwire's broadband service to make EBS license substantial service showings, as demonstrated by a sampling of 127 representative EBS licenses in 20 major markets. The Applicants acknowledge that EBS licensees rely on Clearwire's coverage to satisfy their buildout requirements. Given this unrefuted evidence that EBS spectrum is suitable and available – and the fact that Clearwire is using it today – for commercial mobile services, it should be added to the screen.

The Applicants do little but cite back to outdated Commission findings in a 2008 Order to support continued exclusion. Verizon Wireless demonstrated, however, that circumstances have significantly changed since 2008 because today more than 98% of markets have been transitioned to the Commission's mobile broadband plan. Verizon Wireless also demonstrated why each of the factors then cited by the Commission no longer supports exclusion. The Applicants' claim that the Commission "affirmed" its 2008 approach in two recent transactions is disingenuous, as the Commission in those cases *declined* to engage in any new analysis of whether to include additional BRS/EBS spectrum in the context of two transactions, because

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⁵ See EBS Licensees Petition at 5-6, 14.

⁶ See EBS Licensees Petition at 9-10 & Exh. 2 § 5.

⁷ See id. at 6-7 & Exh. 1.

⁸ See Joint Opposition to Petitions to Deny and Reply Comments of Sprint Nextel Corporation and SoftBank Corp., IB Docket No. 12-343, at 46 (Feb. 12, 2013) ("Sprint Nextel-SoftBank Joint Opposition").

⁹ See id. at 29-30.

¹⁰ See Verizon Wireless Comments at 4-11.

those transactions involved different bands of spectrum, specifically AWS and WCS – whereas BRS/EBS is the very spectrum at issue here.¹¹

The Applicants ignore Verizon Wireless's detailed showing why BRS and EBS spectrum in the 2.5 GHz band's Lower Band, Middle Band, Upper Band and Guard Band spectrum are suitable and available for mobile services. ¹² Instead, the Applicants claim that the spectrum should continue to be excluded because the 2.5 GHz band has "shorter propagation" relative to bands below 1.9 GHz. ¹³ This of course has never been the standard, as evidenced by the Commission's inclusion of spectrum above 1.9 GHz, including AWS (2.1 GHz), WCS (2.3 GHz), and 55.5 MHz of BRS (2.5 GHz). ¹⁴ Applicants' claim that "varying availability of 2.5 GHz channels in major metropolitan areas" supports exclusion is belied by Clearwire's repeated statement that it has a spectrum depth of 160 MHz of 2.5 GHz spectrum in the top 100 U.S. markets. ¹⁵ As one petitioner notes, "Sprint's and Clearwire's statements at various times regarding their average 160 MHz of 2.5 GHz spectrum position should make it clear that the

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¹¹ See Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC et al., Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10721 ¶ 63 (2012) ("We find that it is unnecessary for purposes of reviewing the transactions before us to determine what bands should or should not be included in the initial screen") (emphasis added); AT&T Mobility Spectrum LLC et al., Memorandum Opinion and Order, 27 FCC Rcd 16459, 16471 ¶ 32 (2012) ("AT&T WCS Order") ("For purposes of this transaction, we decline to include in the screen additional BRS spectrum [and] EBS spectrum") (emphasis added).

¹² See Verizon Wireless Comments at 9-11.

¹³ Sprint Nextel-SoftBank Joint Opposition at 31.

 $^{^{14}}$ See, e.g., AT&T WCS Order, 27 FCC Rcd at 16469-71 $\P\P$ 29-31.

¹⁵ Sprint Nextel-SoftBank Joint Opposition at 31; see Clearwire, Investor Presentation, at 5 (Sept. 19, 2012) ("Clearwire Investor Presentation"), http://corporate.clearwire.com/common/download/download.cfm?companyid=CLWR&fileid=60 (1991&filekey=32db5f93-ac2a-4ead-958e-7a2cbe9fd9ae&filename= 2012 9 19 Communacopia Hope.pdf; Clearwire Corp. Form 10-K, at 14 (Feb. 16, 2012) (for period ending Dec. 31, 2011); see also Verizon Wireless Comments at 5-6. At most, varying spectrum availability would be a possible basis to limit the amount of spectrum under review in a particular market, not a basis to exclude additional 2.5 GHz spectrum generally from the screen.

Commission should revisit whether 55.5 MHz is truly the correct amount of spectrum to include for market competitiveness calculations."¹⁶

The Applicants cannot have it both ways: they cannot assert that "Clearwire's spectrum, when combined with Sprint's, will provide Sprint with an enhanced spectrum portfolio that will strengthen its position and increase competitiveness in the U.S. wireless industry," while also asserting that Clearwire's spectrum should not be included in the spectrum screen.

Finally, the Applicants' contention that additional BRS/EBS spectrum should not be counted because it would give "headroom" to other carriers that do not hold 2.5 GHz spectrum runs counter to the principled application of a spectrum screen. It is a patently self-serving attempt to build a carrier-specific test into the screen to disguise the fact that Sprint already has access to far more spectrum than any other carrier. This is the antithesis of what the screen should be: a carrier-neutral test that accounts for *all* spectrum suitable and available for mobile services.

In a license transfer decision adopted just two months ago, the Commission found that 20 MHz of WCS spectrum that was the subject of that transaction was "suitable and available" for mobile services and added that spectrum to the screen.²⁰ The case for inclusion is even stronger

¹⁶ Taran Petition at 9

¹⁷ News Release, Sprint Nextel, *Sprint to Acquire 100 Percent Ownership of Clearwire for \$2.97 per Share* (Dec. 17, 2012) (emphasis added), http://newsroom.sprint.com/article_display.cfm?article_id=2477; *see also id.* (quoting Sprint CEO Dan Hesse as saying that "[t]oday's transaction marks yet another significant step in Sprint's improved competitive position and ... Sprint is uniquely positioned to maximize the value of Clearwire's spectrum and efficiently deploy it to increase Sprint's network capacity").

¹⁸ See Sprint Nextel-SoftBank Joint Opposition at 30.

¹⁹ See Clearwire Investor Presentation at 5 (stating that "Clearwire holds the largest spectrum portfolio in the U.S."). Indeed, Clearwire and Sprint Nextel together under control by SoftBank would control an average of 215 MHz of spectrum in the top 100 U.S. markets. *See id*.

²⁰ AT&T WCS Order, 27 FCC Rcd at 16470-71 ¶ 31.

here, where the BRS/EBS spectrum is already in use for mobile services and the Applicants are telling investors and the Commission that the transaction is in the public interest because full ownership of this same spectrum will enable Sprint to compete more effectively. Reversing course from such an on-point, recent decision would not be consistent with basic principles of agency decisionmaking.

Accordingly, the Commission should, in acting on this transaction, include in the spectrum screen an additional 188.125 MHz, comprising all of the remaining BRS spectrum and all but the five percent of EBS spectrum that is dedicated for educational use.

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Respectfully submitted,

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Certificate of Service

I hereby certify that on this 25th day of February copies of the foregoing "Reply Comments of Verizon Wireless" in WT Docket 12-343 were sent by electronic mail to the following parties:

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