

**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 Rulings under Section 310(b)(4) of the Communications Act of 1934, as amended)	

REPLY TO JOINT OPPOSITION AND COMMENTS

Taran Asset Management (“Taran”) respectfully submits this reply to the Joint Opposition of Sprint Nextel, Starburst I, II and SoftBank in the transfer of *de facto* control of Clearwire Communications (“Clearwire”) to Sprint Nextel Corporation (“Sprint”) and to SoftBank Corp., and Starburst II, Inc. (collectively, “SoftBank”, together with Sprint “Applicants”). Taran, as stated in its previous filing and attested to in the attached affidavit, is a minority shareholder in Clearwire controlling approximately 3.6 million shares.¹ As stated before, Taran believes that Sprint and SoftBank’s acquisition of *de facto* control of Clearwire is not in the public interest and the FCC should deny the Applicants’ request or impose the proper conditions addressing the areas of concern highlighted in our Petition to Deny.

¹ Declaration of Chris Gleason, Taran Asset Management (Attachment 1). Taran maintains that any facts contained in its Petition to Deny filed on January 19, 2013, were of public record and, at a minimum, should have been known to Sprint and Clearwire. To the extent that the Commission requires additional confirmation, Taran has included a declaration with this reply that covers both its petition to deny and this reply. If needed, Taran also requests that as neither Sprint nor Clearwire was prejudiced by Taran’s lack of an initial declaration and that Taran has corrected that issue with this filing, Taran contends that there is good cause to waive such a provision should it have been deemed required.

Taran argues that Sprint's acquisition of Clearwire could eliminate an independent source of wholesale access for smaller, startup ventures. Sprint contends that the bulk of Clearwire's wholesale business is with Sprint and that there are alternatives for wholesale customers in the marketplace. Sprint's argument about the fact that the bulk of Clearwire's wholesale business relies almost entirely on Sprint does not address Taran's concern. When Sprint controls Clearwire's spectrum, that spectrum may no longer be made available to third parties. When Sprint did not control Clearwire, Clearwire was free to enter into wholesale arrangements with others. Once Sprint controls that spectrum, it will have a disincentive to sell such spectrum to carriers that will directly compete against it, regardless of size. Therefore, the competitive landscape for wholesale wireless services will be impacted by the transaction in that it eliminates Clearwire as a neutral provider of such services.

Additionally, Sprint has different incentives than Clearwire and Sprint could limit the use of the former Clearwire spectrum to disadvantage smaller carriers that need access to that spectrum in order to provide their services (i.e., roaming). Post-transaction, Sprint's perspective toward the Clearwire spectrum could be to eliminate or limit market entry of other wireless providers that had used the Clearwire spectrum previously (when Clearwire was not concerned that the spectrum would be used against them). The basis of our argument continues to be that as structured, the public receives little in return for Sprint's acquisition of the spectrum and loses a unique model in the US wireless industry.

Some disclosures in Clearwire's Preliminary Proxy statement filed February 1, 2013 with the SEC since Taran submitted its Petition to Deny with the Commission on January 19, 2013, are relevant for review in this response.

Sprint argues that statements by Clearwire’s CEO, Erik Prusch, and proxy disclosures provide sufficient evidence that Clearwire is unable to attract a business or wholesale partner of significance but we believe these disclosures reveal more about Sprint’s machinations rather than any failure of Clearwire’s management to locate a partner.² Clearwire’s preliminary proxy states that Sprint’s level of involvement and control was a problem for three potential capital investments from financial partners. “The discussions...terminated because the parties could not agree on transaction structures....These private equity firms each cited the Company’s existing governance structure as an impediment to completing a transaction.”³ Sprint failed to provide support that would have allowed another cited transaction to occur.⁴ Sprint also insisted on a “dissenters’ rights” termination clause which the Clearwire management eventually convinced them to drop.⁵ Perhaps most telling of Sprint’s ultimate strategy which resulted in Clearwire being an unattractive partner, Sprint signed Lightsquared as a Network Vision partner then at its October 7, 2011 analyst day, publicly claimed Lightsquared was their preferred LTE partner, mentioned a possible restructuring for Clearwire, and described precautions taken regarding their own balance sheet in a potential Clearwire restructuring scenario.⁶ While this is all history,

² Sprint Joint Opposition to Petitions to Deny and Reply to Comments, p. 6, February 12, 2013.

³ Clearwire Preliminary Proxy Statement, p. 16, February 1, 2013.

⁴ Spring of 2012, resumed discussions with Party C. Clearwire Preliminary Proxy Statement, p. 18, February 1, 2013.

⁵ Clearwire Preliminary Proxy Statement, p. 25-28 & 30, February 1, 2013.

⁶ “On October 7, 2011, Sprint held an analyst day and made a series of public announcements regarding new business plans and commercial arrangements, including that (1) as part of its plan to rebuild its existing 3G CDMA network and shut down its 2G iDEN network, it would be deploying its own LTE network on its existing, unused 1.9 MHz spectrum in the same markets in which the Company offered its services to Sprint, (2) its network hosting agreement with Party F would provide Sprint with LTE services that would help satisfy its offload data capacity needs, (3) it had made a significant financial commitment to begin selling the iPhone, which would not operate on Clearwire spectrum, (4) it viewed Clearwire as its third priority for LTE services behind its own LTE network and Party F, and (5) it commented on a potential restructuring of the Company. In June 2011, Sprint also separately announced that it had made an election to voluntarily reduce its voting interest in the Company below 50% to avoid the risk that any default by the Company on its debt obligations would trigger a default by Sprint under its own debt instruments. Following the announcements by Sprint on its analyst day that it planned to pursue a 4G LTE network without the Company’s assistance, the Company’s stock price fell 32% from \$2.05 per share on October 6, 2011 to \$1.39 per share on October 7, 2011. These announcements also caused the Company to reevaluate the amount of

Taran would like to at least recognize the difficulties Clearwire's management faced in dealing with Sprint.

Taran agrees with the position of Verizon Wireless that the Commission should revisit the inclusion of EBS spectrum in the spectrum screen, especially in light of the proof of value that we have received from Sprint and the marketplace over the last few years. Since 2008, Sprint and Clearwire investor presentations and statements to the media have always touted their superior spectrum position with 160 MHz of 2.5 GHz in most major markets as a key company asset. Although EBS spectrum has a few complications such as leases and educational usage requirements, these have proven not to be an impediment to its national deployment and use in Clearwire's current network. To characterize our comments on the changes to the industry and 2.5 GHz spectrum since 2008 as "vague" is disingenuous. There is no doubt that the value of this spectrum has improved dramatically through worldwide adoption and recognition of the utility of high-frequency spectrum. At most, we consider our statement as a tautological contribution to our argument given the present suitability and availability of the band for mobile broadband use and the Commission's current open proceeding to re-evaluate its screening methodology.

Additionally, as Verizon notes, the Commission only recently found that WCS spectrum was reasonable to incorporate in the screen.⁷ WCS has neither been used nationally for broadband nor is there a device ecosystem both conditions of which exist in the 2.5 GHz spectrum today. We reiterate our position that Sprint's argument is nonsense and we ask the

additional capital that would be required for its business and its ability to secure such capital." - Clearwire Preliminary Proxy Statement, p. 17, February 1, 2013.

⁷ See Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company, Memorandum Opinion and Order, WT Dkt. No. 12-240, FCC 12-156

Commission to reconsider the 55.5 MHz allocation from which Sprint currently benefits and ask the Commission to amend that to the useable spectrum. We wonder: Could a buyer actually purchase EBS spectrum and avoid any review under the current screening policy?

Contrary to Sprint's view that revisiting the EBS/BRS spectrum would "waste Commission resources," we believe this inquiry is at the heart of the Commission's responsibilities.⁸ We agree with Verizon that inclusion of all but the 5% of EBS reserved capacity is a reasonable solution.

Contrary to Sprint's claims, Taran is not asking the Commission to review or judge this Sprint transaction in relation to any other transaction including the current offer from Dish Networks. We are simply requesting the Commission deny the current transaction or impose conditions which are in the spirit of the 2008 Order. The current transaction which consolidates Sprint's holding of 2.5 GHz spectrum provides very little to the public in benefits compared to Sprints control of the entire 2.5 GHz spectrum band.

In our filing, we neither argue the concerns of Taran investors nor corporate control issues at Clearwire but only the relevant public interest concerns as we seen them. That our standing comes from our status as minority investors in Clearwire does not nullify our arguments. As we view the world, whether a minority or majority investor, an owner or an operator we are stake holders and the current transaction is not the same as contemplated in the 2008 Order and the Commission should recognize this and conduct a thorough review as had been performed in 2008. There are many owners of spectrum licenses who are not operators and vice versa. As a "for-profit" firm, Sprint should not hold-out that it is somehow entitled to a

⁸ Sprint Joint Opposition to Petitions to Deny and Reply to Comments, p. 27, February 12, 2013.

different standard. Sprint's pursuit of Clearwire is solely for-profit. While that profit will come from providing a better service than competitors, it's still an inherently selfish motivation and Taran has a similarly selfish motivation for pointing out to the Commission issues which we believe are extremely relevant to the public interest consideration.

The value of Clearwire's spectrum has been obvious for as long as Wi-Fi has been popular. The high-band element of network architecture most providers are adopting for data service is already ubiquitous in Wi-Fi and even a quick review of the LTE and LTE-A standards confirms this architecture shift. Whether the spectrum is licensed or unlicensed is not the point. High-frequency spectrum, with its *superior* propagation characteristics (when greater reuse is necessary) is the solution given today's radio limitations. Historically, most of the increased carrying capacity in spectrum results from increased densification of networks and Wi-Fi is currently an extreme example of the capacity that density enables. While there are many ways to increase capacity in wireless networks and capacity has increased because of major advancements in many system components, nothing comes close to that of reusing spectrum millions of times. Wi-Fi has drawbacks and is not a substitute mobility product yet but a good complement. In the Wi-Fi architecture is the outline of a solution to the localized data problem. Right now, Clearwire's spectrum is key in the mobility environment. We have no doubt also that future advances in standards and radio design will nullify these problems and no doubt spawn an entirely new set of wireless leaders and component companies in which we hope to be lucky enough to invest. Today though, 2.5 GHz spectrum is unique to the development of mobile, high-speed wireless broadband in the United States and making sure this spectrum is deployed as efficiently as possible is an essential public interest concern.

Respectfully submitted,



Taran Asset Management

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Dated: February 25, 2013

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Declaration of Chris Gleason

My name is Chris Gleason and I am the Managing Partner of Taran Asset Management (Taran). This declaration is in connection with Taran’s petition to deny and its reply and comments to the joint opposition of Sprint Nextel, Starburst I, II, and SoftBank in the transfer of *de facto* control of Clearwire Communications to Sprint Nextel Corporation and to SoftBank Corp. and Starburst II.

I hereby certify under penalty of perjury that the statements of fact set forth in its **Petition to Deny** and the accompanying **Reply to Joint Opposition and Comments** are true and correct to the best of my knowledge, information, and belief.



 C. Chris Gleason

2 / 25 / 13

 Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Taran Asset Management's **Reply to Joint Opposition and Comments** in *In the Matter of Applications of Sprint Nextel Corporation, Transferor, SoftBank Corp., and Starburst II, Inc., Transferees, Joint Applications for Consent to Transfer Control of Licenses, Lease, and Authorization; and Petition for Declaratory Rulings under Section 310(b)(4) of the Communications Act of 1934, as amended*, IB Docket No. 12-343, submitted and served by electronic mail on February 25, 2013, to the following recipients:

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