

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

In the Matter of)
)
Applications of Sprint Nextel)
Corporation Transferor)
)
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)

IB Docket No. 12-343

COMMENTS ON PETITION TO DENY

North American Catholic Educational Programming Foundation, Inc. (“NACEPF”) hereby comments on the petition to deny (“Petition”) filed by the Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania and its affiliates (“Petitioners”). NACEPF disputes key facts and assertions that the Petitioners set forth in the Petition, particularly Petitioners’ characterization of Clearwire’s approach to educational use as this is contrary to NACEPF’s direct experience. These comments are being submitted to ensure the Commission has balanced and accurate information related to this matter.

NACEPF is one of the largest national EBS spectrum licensees in the country, with more than 50 licensed stations throughout the United States; these include both larger metropolitan areas like Seattle, WA (WLX726) as well as many smaller, rural areas such as Great Bend, KS (WLX525) and Enid, OK (WND535). All of NACEPF’s EBS licenses are party to an excess-capacity agreement with a Clearwire Corporation subsidiary, Clearwire Spectrum Holdings II (“Clearwire”). This agreement has enabled NACEPF to provide wireless broadband access to K-12 schools, colleges, universities, libraries and a variety of other nonprofit organizations.

The diversity of our licensed markets provides us with a unique perspective as we have had to work with Clearwire to ensure educational use requirements were satisfied in Clearwire’s commercially built-out markets, as well as within the more limited coverage footprint available in rural and traditionally underserved market

areas. Each of these cases has presented their own set of challenges; yet, NACEPF and Clearwire productively worked through these issues to provide service in all cases that is “sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal.”¹

I. The Petition’s Characterization of Clearwire’s Approach to Educational Uses of EBS Is Inconsistent with NACEPF’s Direct Experience.

While the Petitioners charge that “Clearwire has stifled development and educational usage of EBS spectrum...”² NACEPF finds the general characterization of Clearwire’s performance to be contrary to our direct experience. Our agreement with Clearwire has enabled NACEPF to create Mobile Beacon,³ a division responsible for providing 4G mobile broadband access to educational and nonprofit entities. Mobile Beacon provides these services through technology donation programs, as well as low-cost service plans that are more broadly available to both educational and nonprofit entities.

On the national scale that exists today, the Mobile Beacon initiative would not have been possible without Clearwire constructing, operating, and maintaining a widespread, reliable network. We provide access to the same network (and offer the same choice of devices) that Clearwire provides to its own retail customers. Our organization relies on the quality and extent of Clearwire’s broadband network. Our future ability to continue to provide these services will similarly depend on Clearwire’s continued use of EBS spectrum as well as the quality and extent of its LTE network.

Furthermore, Clearwire has provided us with their Level Three customer support team to ensure that the educational end users and nonprofits who receive service through Mobile Beacon have access to highly-trained technical support representatives seven days a week. This provides significant value as many of our educational end users do not have in-house technical expertise and the assurance of quality technical support instills confidence in the viability of the broadband solution for their needs.

Additionally, in the rural GSAs where NACEPF is licensed and Clearwire’s network was not commercially built-out, the coverage footprint (and therefore the corresponding pool of possible accredited educational end users) was often very limited. NACEPF used its best efforts to find schools within the identified coverage area; however, in some cases, the end users were located in areas where Clearwire’s network did not cover. In these cases, NACEPF worked with Clearwire to find engineering solutions that would make this

¹ 47 C.F.R. §27.14(o)

² Petition at p. 6.

³ More complete information about Mobile Beacon can be found at www.mobilebeacon.org

broadband service available in the location it was needed. Clearwire sent engineers and outside contractors (at its own expense) to provide custom installations that included: (1) installing 89 outdoor modem units (ODUs) across 37 locations in our licensed GSAs; the ODUs provided increased range and signal penetration from a nearby base station, making an area serviceable that would not otherwise be possible with Clearwire's indoor modems; (2) in two of our rural markets, Clearwire installed indoor macro cells, which is the equivalent of installing a new base station, but for indoor use at a single location; and (3) in one of our markets, Clearwire completed site work at one base station to optimize antenna placement and thereby provide coverage to one of our target schools.

The Petition states that, "The proof that Clearwire has done virtually nothing to comply with bare minimum educational use obligations of EBS spectrum is in how EBS is being used – (or more appropriately, not being used) in Clearwire deployed markets."⁴ The Petition goes on to include one of NACEPF's licenses (WLX726 in Seattle, WA) in the table on Page 7 of the Petition, as well as Exhibit 1, and characterizes it as one of the "96 substantial service exhibits [that reveal] there is no educational use".⁴ We take exception to the faulty reasoning of the Petitions in charging that our substantial service exhibit "reveals no educational use" despite it containing a signed certification that NACEPF is in compliance with the minimum educational use requirements specified in Part 27 of the Commission's rules.⁵

Within our EBS licensed markets, Mobile Beacon has donated hundreds of Clearwire modems to schools for general educational use including accessing school-related email communications, educational reference and research, data transmissions, uploading and downloading of educational content, and similar activities that further the educational mission of the educational institutions.

In addition to providing modems and broadband service to meet these educational institutions' general needs, we also developed two targeted technology donation programs:

- *Laptop & Modem Donation Program* which includes 25 laptops and 25 Clearwire modems (per school) to provide service to disadvantaged or at-risk students who do not have access to the Internet at home.
- *Security System Donation Program* which includes up to four HD cameras configured to run over Clearwire's broadband network. This system provides a remote live camera server, on-site installation, and the ability for schools to monitor key campus areas.

⁴ Petition at p. 6. Petitioner similarly mischaracterized the filings of four other NACEPF stations in Exhibit A to its *Comments of EBS Licensees Supporting Verizon's Request*, filed as part of this pleading cycle on February 12, 2013, specifically listing WLX526 (Denver, CO), WLX813 (Boise, ID), WNC602 (Kennewick, WA) and WLX807 (Yakima, WA).

⁵ *5 See Guidance to Broadband Radio Service and Educational Broadband Service Licensees on Complying with Requirement to Demonstrate Substantial Service by May 1, 2011*, Public Notice, DA 11-370 (rel. Feb. 25, 2011), attached as Exhibit A.

Educational Use Examples

Holy Rosary School in Tacoma, WA⁶ is the oldest continuously operating Catholic School in the state of Washington. Like many private schools, Holy Rosary had seen declining enrollment in recent years. Before receiving Mobile Beacon's grant, the school had been in danger of closing. After receiving 22 laptops and 22 4G modems through Mobile Beacon's grant program, the school was able to significantly expand curriculum learning opportunities. For example, students who tested out of pre-Algebra could use the network during math class to take an online Algebra class. Holy Rosary School also purchased online history textbooks and added an online component to their classroom English textbooks. The school also implemented Rosetta Stone® Classroom so each student could choose from five foreign languages and soon take part in a full language immersion program.

After announcing the exciting new curriculum and technology enhancements, enrollment nearly doubled. Dr. Timothy Uhl, Principal at Holy Rosary, said Mobile Beacon's service "has been part of a transformation of our school."⁷

Holy Rosary School is only one of the educational institutions working with Mobile Beacon in this licensed GSA, yet Petitioners mischaracterized our filings as demonstrating no educational use. In this market alone, we provided more than 100 4G modems, as well as 94 laptops and one security system. These devices and broadband service are currently being used by one of the area's largest public school districts, an independent college, several private schools, a digital learning facility, and multiple youth development organizations.

Anchorage School District in Anchorage, AK⁸ had more than 3,800 homeless children and youth in its community, with more than 2,400 enrolled in the School District. Mobile Beacon's grant provided laptops and modems for the school district's Child in Transition / Homeless (CIT/H) Project.

While individual student names were not disclosed for their own privacy, the school district shared several success stories this program has achieved through Mobile Beacon's grant. Two such examples are below:

"Nelly" moved to Alaska from Nebraska in 2009. Prior to coming to the United States she and her family lived in a refugee camp in Africa. Since moving to Alaska, Nelly and her family have been

⁶ NACEPF is the licensee of WLX-726 and this educational institution is within the associated GSA.

⁷ http://www.mobilebeacon.org/who+we+help/education/caseStudies_HolyRosarySchool

⁸ NACEPF is the licensee of WLX-344 and this educational institution is within the associated GSA.

homeless for all but 8 months, moving ten times in two years. These moves impacted her ability to graduate on time. She was loaned a computer, took an online class, received tutorial help, and graduated on time.

“Tristan” is a homeless unaccompanied youth who “couch surfs” at friends’ homes. He used a loaner laptop to complete an online course he needed to graduate. He has now begun full-time employment and plans to enroll in college in the fall of 2012.⁹

Lighthouse Christian Academy in Pendleton, OR¹⁰ is a small school specializing in individualized instruction for students of all abilities, including those described as “medically fragile.” The school received Mobile Beacon’s laptop and 4G modem grant and is a shining example of how broadband access can be an incredible learning resource to help students across the spectrum.

For example, a fourth grader with a brain tumor affecting her vision can now access her curriculum online at home. The laptop also was set up with custom settings such as a larger font so she can see the lessons more clearly. The program also benefited another student who is only 12, but working at the 9th grade level. With the laptop and mobile internet access, the school was able to tailor her lessons to offer the academic challenges she needs. She is expected to graduate high school at the age of 15 or 16.¹¹

Other Nonprofit Uses of Mobile Broadband

Mobile Beacon also provides access to Clearwire’s broadband network to a diverse range of nonprofits including fire departments, public libraries, youth enrichment organizations, healthcare, and community development organizations. Two examples of the how Mobile Beacon’s broadband offering is serving the public interest are highlighted below.

People’s Emergency Center (PEC) is a homeless services and neighborhood revitalization nonprofit that serves the community of western Philadelphia. They are using the broadband service they receive from Mobile Beacon to provide broadband to families in their transitional and permanent housing programs. PEC also created 20 computer training labs where adults can go to get digital literacy training, netbooks, and the mobile hotspots from Mobile Beacon, which they can set up at home to gain further proficiency and also teach their children these skills. The mobile hotspots also allow PEC to quickly set up ad-hoc training areas in as little as 30 minutes. PEC recently set up a lab in a community center to provide voting information to low-income

⁹ http://www.mobilebeacon.org/who+we+help/education/caseStudies_Anchorage

¹⁰ NACEPF is the licensee of WNC-602 and this educational institution is within the associated GSA.

¹¹ http://www.mobilebeacon.org/who+we+help/education/caseStudies_LighthouseChristianAcademy

people. To date, PEC has delivered 80,000 hours of training to 50,000 people.¹²

Providence Community Library is a 501(c)(3) nonprofit organization responsible for nine neighborhood libraries in the City of Providence, RI. They are currently using our for library staff who require mobile access as part of their community outreach and special programs. One such special program includes using the mobile hotspots along with their “Book Mobile” to bring library resources to handicapped, disabled, or other individuals who are not able to get to any of the library locations. The libraries’ Circulation Departments are now also making the mobile hotspots available as part of a “check out” program to low-income patrons who do not have Internet access at home.

II. The Petition’s Request for Divestiture of All EBS Spectrum Is Overbroad and Would Cause Material Harm to NACEPF.

The Petitioners’ request that “[at] minimum...any approval [of the Application] should be conditioned on the divestiture by Clearwire of all its EBS spectrum leases to U.S. controlled entities.”¹³ Such an action would cause material harm to NACEPF. The full divestiture or invalidation of all of NACEPF’s leases and associated access rights would place a burden on NACEPF to negotiate and secure new leasing arrangements, which may or may not provide the same access benefits we currently receive.

Moreover, if Clearwire was forced to terminate its agreement with NACEPF, the public interest would suffer. As demonstrated, NACEPF and Mobile Beacon provide thousands of devices to nonprofit organizations representing educational, community-development, healthcare, emergency response sectors. Loss of access to the network that provides these services is contrary to the public interest and the Commission’s goal of promoting growth and rapid deployment of broadband access to educational and community anchor institutions.

III. Assertions of Harm to EBS Licensees If Foreign Ownership Is Approved Is Premature and Unsupported.

The Petitioners make contentions that foreign ownership would inevitably harm educational objectives, but they fail to present evidence of this alleged “certainty”. As NACEPF and other EBS licensees are reliant on the quality and extent of Clearwire’s network, we support a thorough public interest examination by the Commission of any plans that would significantly change the current or future viability of that network. However, we find it premature to reach the seemingly imminent and dire conclusion that the Application would

¹²<http://forums.techsoup.org/cs/community/b/tsblog/archive/2012/12/11/using-smartphones-and-portable-wi-fi-hotspots-to-tell-your-story.aspx>.

¹³ Petition P. 16

“further minimize the potential [that] EBS spectrum will be developed for the purposes and promises envisioned by the Commission....”¹⁴

Respectfully submitted,
North American Catholic Educational Programming Foundation, Inc.

By: /s/ John Primeau
 John Primeau
 President

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North American Catholic Educational
 Programming Foundation, Inc.
2419 Hartford Avenue
Johnston, RI 02919-1719
(401) 934-1100

¹⁴ Paraphrasing the Petition at p. ii.

CERTIFICATE OF SERVICE

I, John Primeau, hereby certify that on this 1st day of March, 2013 a copy of the foregoing Comments to Petition to Deny 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:

Rudolph J. Geist
RJGLaw LLC
7910 Woodmont Avenue, Suite 405
Bethesda, MD 20814
RGeist@rjglawllc.com
Counsel to the Petitioners

Nadja Sodos-Wallace
CLEARWIRE SPECTRUM HOLDINGS LLC
1250 Eye Street, NW
Suite 901
Washington, DC 20005
(202) 330-4011
nadja.sodoswallace@clearwire.com

Regina Keeney
LAWLER, METZGER, KEENEY & LOGAN, LLC
2001 K Street, NW
Suite 802
Washington, DC 20006
(202) 777-7700
gkeeney@lawlernetzger.com
Counsel to Sprint Nextel Corporation

John R. Feore
DOW LOHNES PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(202) 776-2818
jfeore@dowlohnes.com
Counsel for Softbank, Corp., Starburst I, Inc and Starburst II, Inc.

 /s/ John Primeau
By: John Primeau