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March 19, 2013

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation in IB Docket No. 12-343, *Applications of Sprint Nextel Corporation, SoftBank Corp., and Starburst II, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*; WT Docket No. 02-55, *Improving Public Safety Communications in the 800 MHz Band*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing a meeting on Friday, March 15, 2013 with Jim Bird, Office of General Counsel; Neil Dellar, Office of General Counsel; Joel Rabinovitz, Office of General Counsel; Troy Tanner, International Bureau; Francis Gutierrez, International Bureau; Margaret Lancaster, International Bureau; David Krech, International Bureau; Jodie May Donovan, Wireline Competition Bureau (by telephone); Christopher Sova, Wireline Competition Bureau (by telephone); Wayne McKee, Media Bureau (by telephone); Susan Singer, Wireless Telecommunications Bureau; Paul Murray, Wireless Telecommunications Bureau; and Kathy Harris, Wireless Telecommunications Bureau. Present on behalf of DISH were Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; Alison Minea, Director and Senior Counsel; and Hadass Kogan, Associate Corporate Counsel.

During the meeting, DISH urged the Commission to require SoftBank and Sprint (together, the "Applicants") to immediately submit additional information regarding their plans to use the more than 200 MHz of mobile broadband spectrum at stake in the above-referenced transactions. To date, there is insufficient information in the record for the Commission to conduct a full public interest analysis, as required by the Communications Act.¹ Among other things, the Applicants should submit a market-by-market breakdown of their spectrum holdings post-transaction. In addition, the Applicants should provide information regarding their spectrum utilization plans. A full review of these issues is necessary to ensure that the unprecedented amount of spectrum at issue is fully utilized. DISH also discussed its recent filing

¹ See 47 U.S.C. § 310(d).

opposing Sprint's Petition for Declaratory Ruling that Sprint has incurred expenses in the 800 MHz rebanding that exceed the \$2.8 billion "anti-windfall" payment to the U.S. Treasury.²

Market-by-Market Analysis and Spectrum Aggregation. The Applicants should be required to submit a market-by-market analysis of their post-transaction spectrum holdings, so that the Commission can fully analyze the competitive implications of these transactions. This type of data is routinely required in spectrum transactions,³ and Sprint itself has called for parties in other wireless transactions to provide similar showings.⁴ Once this information is furnished, the Commission will be able to determine whether divestitures or other remedial conditions are appropriate.

Such a supplemental showing is important, given that the proposed transactions would put more U.S. spectrum than anyone else holds in the hands of a single, foreign-owned company. The Applicants' main argument in support of the public interest benefits of the transactions relies on SoftBank's alleged record of strengthening competition and lowering prices in Japan, but Japan's size and market conditions differ widely from the U.S. and the Applicants have thus far been silent on any concrete ways for transmitting SoftBank's claimed acumen to Sprint and the U.S. market.

Global Adoption of the 2.5 GHz Band for TDD-LTE. In addition, the Commission should include all of Clearwire's 2.5 GHz spectrum in the spectrum screen analysis for these transactions. Today, virtually all of Clearwire's spectrum is suitable for mobile broadband service, leaving no justification for its exclusion.

If Sprint (and SoftBank indirectly) controls Clearwire, then nearly the entire 2.5 GHz band in the U.S. will be dominated by a single entity. This would have significant effects on, among others, international carriers who use the 2.5 GHz band, because Sprint would be their only roaming partner in the U.S. for those frequencies. The 2.5 GHz band is being adopted

² See DISH Network Corporation Comments, WT Docket No. 02-55 (Feb. 25, 2013).

³ See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd. 10698, 10721-22 ¶ 64 (2012); Applications of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations, *Order*, 26 FCC Rcd. 17589, 17602 ¶ 31 (2011); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 19 FCC Rcd. 21522, 21552 ¶ 58 (2004).

⁴ See Sprint Nextel Corporation Petition to Deny, WT Docket No. 11-65, at 119 (May 31, 2011) (The Applicants "completely fail to answer critical questions about AT&T's LTE deployment schedule, the nature of the service AT&T would offer, and what AT&T would invest to reach its deployment target."). See also Sprint Nextel Corporation Reply Comments, WT Docket No. 11-65, at 51 (June 20, 2011) ("The Applicants never provide a sufficient explanation as to why AT&T has been so slow in putting to use its unused spectrum"); *id.* at 59 ("The Applicants assert that combining the AT&T and T-Mobile networks would create various synergies, but they refuse to quantify these synergies in a manner that permits verification.").

globally for mobile services and holds promise for meeting the capacity demands of today's 4G LTE networks. In addition, the global trend towards TDD applications in the 2.5 GHz band, and the adoption of the global Band 41, illustrate the growing trend to make use of the 2.5 GHz spectrum. In fact, DISH is not aware of any other countries that have allowed a single carrier to hold all 2.5 GHz licenses within their borders, given that band's growing importance for 4G LTE networks. Many countries, such as China, have taken steps to ensure that more than one operator will have access to the 2.5 GHz band.⁵ Given these recent technological and competitive changes, the Commission must conduct a full review of the Applicants' proposed transactions, and cannot simply rely on its 2008 approval of the Sprint-Clearwire transaction.⁶

Spectrum Utilization Plans. As a technical matter, the Applicants face a number of limitations that impact whether they will be able to utilize all of the spectrum they propose to consolidate under a single entity. As detailed in DISH's reply comments,⁷ Sprint devices currently do not support all of Sprint's existing 3GPP bands (notably, Sprint currently excludes Band 26 from its devices). Sprint has provided no justification for how it intends to continue to support its current spectrum holdings, while also adding the three additional bands necessary to utilize Clearwire's 2.5 GHz spectrum (Bands 7, 38 and 41) and, potentially, the H Block (which Sprint has previously expressed interest in acquiring at auction). Without the ability to accommodate all of these bands in a chipset, valuable spectrum will lie fallow. The Applicants must immediately submit evidence of their spectrum utilization plans to ensure this result is avoided, or else divest Clearwire 2.5 GHz spectrum that they do not plan to use.

Anti-Windfall Payment for 800 MHz Rebanding. DISH also discussed Sprint's request for a Commission ruling that Sprint will not have to make an "anti-windfall" payment to the U.S. Treasury pursuant to the Commission's 800 MHz and 1990-2025 MHz rebanding orders. Sprint has asked the Commission to erase a debt of \$2.8 billion without conducting any due diligence about the claimed offsets.⁸ The work undertaken by the 800 MHz Transition Administrator ("TA") to date, however, is insufficient to fully account for these expenses for a number of reasons. First, the TA itself has repeatedly indicated that Sprint's "Credible Cost" expenditures

⁵ See *China government plans to release 2,500-2,690MHz bands for TDD-LTE*, Datang Telecom, Oct. 18, 2012, available at <http://www.datang-telecom.com/templates/News%20Page/index.aspx?nodeid=177&page=ContentPage&contentid=445> ("China's Ministry of Industry and Information Technology (MIIT) plans to assign 2,500-2,690 MHz frequency bands, a total bandwidth of 190MHz, for TDD-LTE mobile communications" and the "bandwidth of 190MHz implies that more than one operators will be given an allocation, and China Telecom is the most likely second candidate" in addition to China Mobile).

⁶ See Reply of DISH Network L.L.C to Opposition of Clearwire Corporation to Petition for Reconsideration, ULS File No. 0005480932, *et al.*, at 4-5 (Jan. 29, 2013). See also *See Sprint Nextel Corporation and Clearwire Corporation, Memorandum Opinion and Order*, 23 FCC Rcd. 17570, 17617 ¶ 119 (2008) ("*Sprint-Clearwire Order*").

⁷ See DISH Network L.L.C Reply Comments, IB Docket No. 12-343, at 23-24 (Feb. 25, 2013).

⁸ See *Sprint Nextel Corporation, Petition for Declaratory Ruling*, WT Docket No. 02-55, at 13 (Jan. 22, 2013) (arguing that the Commission should not require "that the TA verify and audit every dollar Sprint spends to implement the 800 MHz reconfiguration plan.").

need to be confirmed with a final accounting, which is to be undertaken by the TA at the end of the transition *and* must also be verified by “the results of the external audit.”⁹ Second, only \$945.6 million of the amount Sprint claims towards the \$2.8 billion anti-windfall payment has been subject to an independent third-party review (the TA’s review) and deemed creditable. Third, Sprint’s 1.9 GHz expenditures will never be reviewed by the TA, as they are outside of the TA’s jurisdiction. Finally, Sprint has failed to answer a number of questions that were raised in response to its petition, including why its claims to the TA have been subject to a very high rejection rate, and why it has not even submitted such a large percentage of its claims. The Commission should reject Sprint’s petition and require Sprint to submit itself to a full audit.

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Jim Bird
Neil Dellar
Joel Rabinovitz
Troy Tanner
Francis Gutierrez
Margaret Lancaster
David Krech
Jodie May Donovan
Christopher Sova
Wayne McKee
Susan Singer
Paul Murray
Kathy Harris

⁹ 800 MHz Transition Administrator, LLC Quarterly Progress Report for the Quarter Ended December 31, 2012, WT Docket No. 02-55, at 33 (Mar. 15, 2013).