

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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

**OPPOSITION TO
SUPPLEMENT TO REQUEST TO HOLD PROCEEDING IN ABEYANCE**

Sprint Nextel Corporation (“Sprint”), SOFTBANK CORP. (“SoftBank”) and Starburst II, Inc. (“Starburst II”) (collectively, the “Applicants”) hereby oppose DISH Network Corporation’s (“DISH’s”) further attempt to have this proceeding held in abeyance.¹ Applicants urge the Commission to promptly conclude its review and grant the Applicants’ pending applications, which would allow the Applicants to proceed with the only binding agreements concerning the control of Sprint and Clearwire Corporation (“Clearwire”), and provide numerous pro-competitive benefits to American consumers.

¹ See DISH Network Corporation, Supplement to Request to Hold Proceeding in Abeyance, IB Docket No. 12-343 (April 17, 2013) (“Supplemental Request”).

As with DISH's original January request,² DISH's supplement proffers no basis to stop the Federal Communication Commission's ("Commission's") ongoing review. Notwithstanding DISH's most recent supplement, the Commission has only one set of license transfer applications before it and these Applications arise from the only transaction agreements before the Commission – those between SoftBank and Sprint and between Sprint and Clearwire.³

DISH wrongly suggests that it would be prudent for the Commission to derail this review while it waits until an alleged uncertainty – uncertainty that DISH itself is attempting to create by its unsolicited proposal – is resolved. DISH has this exactly backwards. The Commission has been working diligently on the pending applications, which now stand at day 140 of the Commission's shot clock. The Commission must not be distracted by DISH's latest maneuverings, just as it was not distracted by DISH's original request, and, based on long-established precedent, continue the orderly processing of the applications to conclusion.⁴

DISH also has it backwards when it argues that the Commission's continuing, orderly processing of the pending Sprint and SoftBank Applications contravenes the Commission's "policy of strict neutrality in corporate valuation contests."⁵ Commission review and approval of the transaction in no way limit DISH's ability to make competing bids for Sprint, nor does it prejudice in any way DISH's ability to challenge SoftBank's valuation of Sprint. Most importantly, however, DISH's request conflicts with Section 310(d) of the Communications Act

² See DISH Network L.L.C Request to Hold Proceeding in Abeyance, IB Docket 12-343, (Jan. 16, 2013).

³ See Sprint Nextel Corporation, Starburst II, Inc., and SOFTBANK CORP., Opposition to Request to Hold Proceeding in Abeyance, at 2-4 (Jan. 23, 2013) ("Sprint/SoftBank Jan. 2013 Opposition") (describing the relevant finalized merger agreements).

⁴ The Commission acted reasonably and in accordance with precedent in not being distracted by DISH's original request, which was predicated on a DISH proposal to acquire Clearwire.

⁵ Supplemental Request at 6.

of 1934, as amended (“Communications Act”),⁶ and Commission precedent by wrongfully urging the Commission to weigh an alternative proposal not before the Commission.

Section 310(d) of the Communications Act expressly prohibits the Commission from even considering the delay or comparative analysis proposed by DISH:

[I]n acting [on a license transfer or assignment application] the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.⁷

As the Commission has stated, under Section 310(d), the Commission may “not indulge in comparative analyses between the transferee and others, including the existing licensee.”⁸ This statutory prohibition “avoid[s] ‘an unwise invasion by a governmental agency into private business practice . . . and undue delay in passing upon transfers of licenses.’”⁹

DISH wholly ignores this precedent and the sound policy considerations underlying the Commission’s decisions, and instead urges the Commission to intervene in matters of corporate control, which the Commission has found to be beyond its jurisdiction.¹⁰ DISH’s attempt to once again invoke the ripeness doctrine, which it concedes is not binding, provides no basis for

⁶ 47 U.S.C. § 310(d).

⁷ *Id.*

⁸ *Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 6858, ¶ 8 (Comm. Carr. Bur. and Mass Media Bur. 1989) (“*MMM Holdings*”), *aff’d on review*, 4 FCC Rcd 8293 (1989).

⁹ *Id.* (quoting S. Rep. No. 82-44, at 8 (1st Sess. 1951)). *See also Application of Citadel Communications Company, Ltd. (Assignor) and ACT III Broadcasting of Buffalo, Inc. (Assignee) for Assignment of License of Television Station WUTV (TV), Buffalo, New York*, Memorandum Opinion and Order, 5 FCC Rcd 3842, ¶ 16 (1990) (finding that the Commission “cannot consider whether some other proposal might comparatively better serve the public interest”); *KETX(AM)*, Letter Ruling, 23 FCC Rcd 12687 (MB 2008) (rejecting claim that the Commission should consider whether a competing offer exceeded the transferee’s offer to acquire the licensee).

¹⁰ *Tender Offers and Proxy Contests*, Policy Statement, 59 R.R.2d 1536, ¶ (1986); *Graphic Scanning Stockholders for Independent Management; Consolidated Application for Pro Forma Transfer of Control of Graphic Scanning Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 1986 FCC LEXIS 3733, ¶ 5 (CCB 1986).

delay.¹¹ The comment cycle has closed and the parties have provided all information necessary or requested for the Commission to conclude its analysis and grant the Applications. DISH's request for Commission intervention would, as a consequence, provide an artificial benefit to DISH to pursue its corporate strategy, rather than leveling the playing field. The Communications Act and Commission precedent prohibit such intervention.

The Commission should reject DISH's request, conclude its review of the pending Applications, and promptly approve them as in the public interest.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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¹¹ Supplemental Request at 5. *See also* Sprint/SoftBank Jan. 2013 Opposition at n. 21 (responding to DISH's "ripeness" arguments).