

May 29, 2013

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Joint Applications of Sprint Nextel Corporation, SOFTBANK CORP.,
and Starburst II, Inc. and Petition for Declaratory Ruling under Section
310(b)(4) of the Communications Act of 1934, as Amended
IB Docket No. 12-343
File No. ISP-PDR-20121115-00007
Notice of *Ex Parte* Presentation and Written *Ex Parte* Presentation

Dear Ms. Dortch:

On May 24, 2013, Regina M. Keeney, counsel for Sprint Nextel Corporation (“Sprint”), Cathy Massey of Clearwire Corporation (“Clearwire”) and the undersigned, counsel for SoftBank Corp. (“SoftBank”), met with David Goldman and Priscilla Delgado Argeris of Commissioner Rosenworcel’s office. Pursuant to Section 1.1206 of Commission’s rules, 47 C.F.R. 1.1206, we submit this letter summarizing the meeting and providing further analysis of the Federal Communications Commission’s (the “Commission’s”) obligation to process the pending applications without regard to potential competing offers.

During the meeting, we urged the Commission to act promptly on the pending applications to transfer control of Sprint and Clearwire and noted that the comment cycle in this proceeding had closed on February 25, 2013. We provided an update of the national security agencies’ review of the above-captioned proceeding being undertaken by the Committee on Foreign Investment in the United States (“CFIUS”) and Team Telecom.¹

We emphasized that further delay to allow time for the proposal by DISH Network Corporation (“DISH”) to “play out”² would be contrary to law and well-established precedent,

¹ On May 29, 2013, Sprint and SoftBank issued a press release announcing that they had received notice from CFIUS stating it has completed its investigation of the proposed transaction and that there are no unresolved national security issues. *See* Press Release, Sprint Nextel Corporation and SoftBank Corp., Sprint and SoftBank Receive Clearance from Committee on Foreign Investment in the U.S. (May 29, 2013), *available at* <http://www.businesswire.com/news/home/20130529005809/en/Sprint-SoftBank-Receive-Clearance-Committee-Foreign-Investment>

² *See* Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel for Dish Network Corporation, to Marlene Dortch, Secretary, FCC, IB Docket No. 12-343 (filed May 23, 2013).

would violate the Commission's policy of neutrality in contests for corporate control, and would delay substantial public interest benefits.

First. The parties reiterated that there is only one set of applications and binding, finalized agreements pending before the Commission -- those of SoftBank and Sprint and Sprint and Clearwire. We noted that, although the Sprint Board of Directors, in light of its fiduciary obligations, had formed a Special Committee to evaluate the DISH proposal, the Sprint Board had not changed its recommendation with respect to, and continues to support, the pending SoftBank/Sprint transaction.³ The Sprint Board of Directors has reached no conclusions as to whether the DISH proposal is, or would likely lead to, an offer superior to SoftBank's.

Second. The Commission's statutory directive and long-standing precedent bar the agency from considering whether some other proposal might better serve the public interest. It would be unprecedented and contrary to law for the Commission to delay its approval of a transaction that serves the public interest on the possibility that another deal might emerge -- even where another deal had been proposed.⁴

Moreover, it is typical for the Commission to issue an order approving a transaction prior to a shareholder vote, regardless of speculation about the outcome of that vote. The most recent example of this is the Commission's March 12, 2013 approval of T-Mobile USA, Inc.'s ("T-Mobile's") acquisition of MetroPCS Communications, Inc. ("MetroPCS"), which occurred more than five weeks prior to the scheduled shareholder vote and notwithstanding press reports that a number of MetroPCS shareholders objected to the transaction.⁵

³ Similarly, the Clearwire Board of Directors continues to recommend and support Sprint's binding offer to acquire the remaining shares of Clearwire that it does not already own. A shareholder vote regarding the Sprint/Clearwire transaction is now scheduled for May 31, 2013. Clearwire Corp., Proxy Statement -- Additional Proxy Soliciting Materials (definitive), at S-1 (filed May 22, 2013), available at <http://corporate.clearwire.com/secfiling.cfm?filingID=1193125-13-231608&CIK=1442505>.

⁴ See *KETX(AM)*, Letter Ruling, 23 FCC Rcd 12687 (MB 2008) (rejecting petitioner's request to defer action based on his claim that he had made a better offer) ("*KETX Letter Ruling*"). 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").

⁵ *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322 (WTB & IB 2013). See, e.g., Nadia Damouni, *MetroPCS faces pressure to update SEC filings for T-Mobile Deal*, CHICAGO TRIBUNE (Mar. 3, 2013) (noting that the shareholder vote, originally scheduled for March 28, had been postponed to April 12, 2013 and that MetroPCS's largest shareholder planned to vote against the deal), available at http://articles.chicagotribune.com/2013-03-03/business/sns-rt-us-metro-pcs-dealbre92301g-20130303_1_metropcs-and-t-mobile-metropcs-communications-t-mobile-usa. The shareholder vote was subsequently moved to April 24, 2013, after T-Mobile "sweetened its bid." Matthew Rocco, *Deutsche Telekom Improves Terms of T-Mobile-MetroPCS Merger*, FOXBUSINESS (Apr. 11, 2013), available at <http://www.foxbusiness.com/technology/2013/04/11/deutsche-telekom-improves-terms-t-mobile->

The Commission's statutory directive to process the application before it and to disregard other potential offers stems from Section 310(d) of the Communications Act, which states in pertinent part:

[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.⁶

Delaying approval of the Sprint/SoftBank and Sprint/Clearwire transactions to accommodate DISH's requests to wait for further corporate activities, such as the scheduled Sprint shareholder vote, directly contravenes Section 310(d). The Commission has concluded that "[t]his statutory prohibition avoid[s] 'an unwise invasion by a governmental agency into private business practice . . . and undue delay in passing upon transfers of licenses.'"⁷

Quoting the legislative history of this provision, the Commission highlighted that Section 310(d) requires the Commission to process applications "*as though no other person were interested in securing such permit or license.*"⁸ Delaying the pending application as requested by DISH directly contravenes this proscription because the only reason for such a delay would be that another person is interested in securing the Sprint licenses.

The Commission has applied this admonition in rejecting a request to defer action while a claimed better offer was being reviewed by the relevant decision-makers. There, the Commission stated that it "may not consider" whether another offer may better serve the public interest. In rejecting the request to defer consideration, the Commission noted that approval is permissive only and would not prejudice the petitioner in pressing its claimed better offer.⁹ The same rationale applies here. Approving the pending applications does not preclude DISH from pressing its proposal.

metropcs-merger/; Peter Svensson, *MetroPCS shareholders approve T-Mobile offer*, YAHOO! NEWS (Apr. 24, 2013), available at <http://news.yahoo.com/metropcs-shareholders-approve-t-mobile-143039467.html>.

⁶ 47 U.S.C. § 310(d).

⁷ *Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 6838, ¶ 8 (Comm. Carr. Bur. and Mass Media Bur. 1989) ("*MMM Holdings*") (quoting S. Rep. No. 82-44, at 8 (1st Sess. 1951)), *aff'd on review*, 4 FCC Rcd 8243 (1989).

⁸ *MMM Holdings*, 4 FCC Rcd at 6839, ¶ 8 (quoting H.R. Rep. No. 1750, 82nd Cong. 2nd Sess. 7394 (1952)) (emphasis added by Commission).

⁹ *KETX Letter Ruling*, 23 FCC Rcd at 12688.

Third. Delay in approving this pending transaction to wait for DISH's preliminary proposal to "play out" would be not only unlawful, it would be affirmatively harmful. We discussed during the meeting the possible implications of delay on Clearwire's financial condition.¹⁰ Delays would also forestall the substantial and uncontroverted public interest benefits that will result from the SoftBank transaction. During the meeting, the parties described the public interest benefits of the transaction, consistent with the description in the public interest statement. Among these benefits are the creation of a stronger, more financially sound Sprint and Clearwire that will be better able to compete with AT&T and Verizon, the sharing of cutting edge technological know-how from SoftBank, which is a global leader in the deployment of LTE-TDD technology, and the substantial benefits of scale that will place Sprint on a better footing with the largest carriers when negotiating with device and network equipment manufacturers. Delaying these benefits while AT&T and Verizon aggressively forge ahead with their own LTE deployments would only impede the growth of competition to the detriment of consumers.

Fourth. Delaying approval of the pending transaction as requested by DISH would also violate the Commission's long-standing policy of neutrality in matters of corporate control.¹¹ Delaying the approval of a transaction that is found to be in the public interest so that a potential rival bidder may have time to build support for its proposal puts the Commission's thumb clearly on the scale of the late-arriving bidder. As Clearwire has previously explained:

Far from leveling the playing field, however, delay at this stage of the proceeding would do nothing other than provide an artificial advantage to DISH in its efforts to displace Sprint's binding agreement with SoftBank. The Communications Act and Commission precedent prohibit such intervention. Non-intervention is not the same as inaction; in some instances, such as this one, inaction by the Commission favors one party in a corporate contest.¹²

¹⁰ Clearwire stated in a recent filing with the Securities and Exchange Commission that "[i]f the Merger is not completed, we may be forced to explore all available alternatives, including financial restructuring, which could include seeking protection under the provisions of the United States Bankruptcy Code." Clearwire Corporation, Proxy Statement - Merger or Acquisition (definitive), at 4 (filed April 23, 2013).

¹¹ See *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).

¹² Opposition of Clearwire Corporation to DISH Supplement to Request to Hold Proceeding in Abeyance, IB Docket No. 12-343, (filed April 25, 2013).

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The parties concluded the meeting by urging prompt approval of the pending transaction.

Sincerely,

/s/ Michael H. Pryor

Michael H. Pryor

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