

Pantelis Michalopoulos
202 429 6494
pmichalo@steptoe.com



1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: IB Docket No. 12-343; Sprint Nextel Corp. and SoftBank Corp., Joint Application for Consent to Transfer International and Domestic Authority

Dear Ms. Dortch:

On behalf of DISH Network Corporation (“DISH”), this letter requests that the Commission make a factual determination as to whether Sprint Nextel Corporation (“Sprint”) has *de facto* control over Clearwire Corporation (“Clearwire”). The need for this determination is acute: the National Security Agreement (“NSA”) that Sprint and SoftBank have reportedly reached with the Committee on Foreign Investment in the United States (“CFIUS”) rests on the premise that Sprint does not currently have *de facto* control over Clearwire. If that premise is inaccurate, two key provisions of the agreement would be undone. In particular, SoftBank would be able to control Clearwire without decommissioning any Chinese-manufactured equipment now deployed by Clearwire, and without submitting any Clearwire purchases of new equipment to U.S. government review. Crest Financial Ltd. (“Crest”) has pointed to a number of facts—including Sprint’s ownership of a majority of Clearwire’s shares and Sprint’s ability to appoint the majority of Clearwire’s Board of Directors—suggesting strongly that the premise of the NSA is inaccurate, and that Sprint enjoys *de facto* control of Clearwire today, meaning that SoftBank would, too, once it consummates its agreement with Sprint.

In reviewing SoftBank’s proposed acquisition of Sprint, CFIUS has reportedly raised significant concerns over SoftBank’s potential reliance on Chinese-manufactured telecommunications equipment in its future plans for Sprint and Clearwire.¹ On May 29, 2013, however, Sprint reported that Sprint and SoftBank had reached an agreement with CFIUS purportedly mitigating these risks, by imposing certain obligations on the SoftBank-controlled

¹ Michael J. de la Merced, *SoftBank and Sprint Win National Security Clearance for Deal*, N.Y. Times Dealbook Blog, (May 29, 2013), <http://dealbook.nytimes.com/2013/05/28/softbank-and-sprint-said-to-win-national-security-clearance-for-deal/>.

Sprint.² Among other things, the NSA reportedly provides the U.S. government with the “one-time right to require Sprint to remove and decommission by December 31, 2016 certain equipment deployed in the Clearwire network” and the “right to review and approve certain network equipment vendors and managed services providers of . . . Clearwire.”³

But these rights of the U.S. government are subject to a condition that may forever be defeated. They seem to be based on Sprint’s representation that Sprint does not today have *de facto* control over Clearwire. Because of that premise, SoftBank is not required to do anything to decommission Chinese-manufactured equipment or submit equipment vendors or managed service providers for review and approval unless “Sprint either *obtains* operational control of Clearwire or consummates its proposed acquisition of Clearwire.”⁴

The second of these two eventualities may never happen.⁵ As to the first, Crest has cited several indicia suggesting that Sprint exercises *de facto* control over Clearwire today.⁶ Among other things, Sprint owns the majority of Clearwire’s stock, and appoints the majority of

² Sprint Nextel Corporation, Current Report (Form 8-K) (May 29, 2013), *available at* <http://www.sec.gov/Archives/edgar/data/101830/000119312513238554/d545797d8k.htm>.

³ *Id.* at 2.

⁴ *Id.* (emphasis added). The review of Clearwire equipment and managed service purchases reportedly kicks in “once Sprint completes its proposed acquisition of Clearwire.” *Id.* If this means that even the “obtaining” of “operational control” over Clearwire does not trigger that requirement, then that provision suffers from a two-fold problem. First, there is no restriction if SoftBank acquires Sprint without any change to Sprint’s rights in Clearwire, even if these rights do amount to a controlling position. (This is the same problem raised by the decommissioning restriction.) Second, the requirement does not set in even if Sprint acquires additional rights in Clearwire but stops short of completing its proposed acquisition of the remaining Clearwire stock.

⁵ In the words of SoftBank’s Chief Executive Officer and Chairman, Mr. Masayoshi Son: “[I]n the worst case, after the voting, Sprint would end up owning 65% of Clearwire at the minimum.” SoftBank Corp., Transaction with Sprint Transcript Related Presentation Materials (Form 425) (May 1, 2013). And according to Mr. Son, with that level of ownership, “Clearwire would be prohibited to have any sales of frequency to outsiders and so on,” which is “good enough.” Thomas Gryta, *SoftBank CEO: Increased Bid for Clearwire Not Necessary*, Wall St. J. Moneybeat Blog (Apr. 30, 2013), <http://blogs.wsj.com/moneybeat/2013/04/30/softbank-ceo-increased-bid-for-clearwire-not-necessary/>.

⁶ See Crest Financial Ltd., Petition for Reconsideration, ULS File No. 0005480932 (Jan. 4, 2013) (“Crest Petition”). DISH has in the past not taken a position on the question. See DISH Network L.L.C., Reply to Opposition, ULS File No. 0005480932, at 7 n.22 (Jan. 29, 2013).

