June 13, 2013

Via Electronic Filing

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
Written Ex Parte Presentation

Dear Ms. Dortch:

Sprint Nextel Corporation ("Sprint") and SOFTBANK CORP., Starburst I, Inc., and Starburst II, Inc. (collectively, "SoftBank", and together with Sprint, the "Applicants") hereby submit this written ex parte presentation in response to the June 12, 2013 letter to the Commission from Pantelis Michalopoulos, counsel to DISH Network Corporation.[1] In that letter, DISH asserts that, in light of the recently-announced updates to the SoftBank-Sprint merger agreement, the Commission should require the Applicants to provide additional information on their pending applications and that the Commission should delay consideration of the applications through a new public notice and comment period. There is no factual or legal basis for DISH's arguments, and the Commission should grant the applications without delay.

First, the Applicants already have provided the Commission with a full description of the changes to the proposed transaction and an analysis of the minimal impact of those changes on the public interest benefits of the transaction.[2] That filing was made promptly after the changes to the transaction were announced, and contains all of the information that is relevant to the Commission's decision processes.

Second, DISH's claim that the changes to the transaction substantially affect the Commission's public interest analysis is simply wrong. As described in the public interest statement and the Merger Update Letter, this transaction offers many public interest benefits in addition to SoftBank's financial investment, including giving Sprint access to SoftBank's technical expertise, particularly in deployment of TDD-LTE; allowing Sprint to benefit from SoftBank's experience in tailoring service plans and devices to meet consumer needs; and

[1] Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-343 (filed June 12, 2013) (the "DISH June 12 Letter"). (Unless otherwise noted, all filings referenced herein were filed in IB Docket No. 12-343.)

[2] Letter from Regina M. Keeney, *et al.*, counsel to Sprint, and John R. Feore, *et al.*, counsel to SoftBank, to Marlene H. Dortch (filed June 11, 2013) (the "Merger Update Letter").

increased scale economies and improved access to new technology resulting from a combined customer base that will rival that of AT&T and Verizon Wireless in size.[3] Although the level of SoftBank's investment in Sprint will be modified, the investment remains substantial, totaling $5 billion, including close to $2 billion to be invested at closing in addition to the convertible debt investment SoftBank already has made in Sprint in conjunction with the merger agreement. SoftBank's investment gives Sprint a substantially stronger balance sheet and greater resources for deploying network assets than it had previously. All of the other public interest benefits identified by Sprint and SoftBank are entirely unaffected by the changes to the merger agreement, and the one benefit that is modified remains a very substantial benefit in its revised form.

Moreover, no party has identified any real public interest harms that could result from this transaction. Under the Commission's sliding scale, which weighs public interest benefits against potential harms, the public benefits of this transaction far exceed the level necessary to support approval.[4] Even if the Commission disregarded SoftBank's $5 billion capital infusion entirely, this is not a close decision given the complete absence of any public interest harms.

Third, DISH's claim that the adoption of a stockholder's rights plan requires Commission review because that plan would restrict U.S. ownership of Sprint is nonsensical. There is nothing in the stockholder's rights plan that says anything about whether U.S. citizens or corporations can own Sprint stock.[5] DISH's claim here is but one more attempt to invoke a xenophobic reaction that is wholly at odds with the Commission's policy to presume that foreign investment from WTO countries is in the public interest.[6] In any event, nothing in those provisions precludes anyone from making a bona fide offer to acquire all of Sprint.

Finally, DISH's citation to the Commission's major amendment rule to justify an additional comment period is inapposite. None of the revisions to the merger agreement remotely qualifies as a major amendment under that rule.[7]

For these reasons, there is no basis for the Commission to open a new public comment period or otherwise delay its review of the pending applications. Sprint and SoftBank continue

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[3] Merger Update Letter at 2, citing Public Interest Statement at 13-30, attached as Exhibit 2 to Joint Applications for Consent to Transfer International and Domestic Authorizations Pursuant to Section 214 (Nov. 15, 2012, filed Nov. 16, 2012) ("Public Interest Statement"); Joint Opposition to Petitions to Deny and Reply to Comments of Applicants at 2-14 (Feb. 12, 2013).

[4] *See, e.g.*, Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542-43, ¶ 40 (2004); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17460-61, ¶ 26 (2008).

[5] In fact, based on Sprint's analysis of its shareholders, it is likely that at least 17% of Sprint's shares will be held by U.S. citizens following the merger. As noted in the Merger Update Letter, Sprint's foreign ownership analysis showed that at least 77.56% of its existing shareholders were U.S. citizens. Merger Update Letter at 3. Since existing Sprint shareholders will own approximately 22% of Sprint's shares after the merger, U.S. shareholders will likely account for at least 17% of all shareholders.

[6] *See Foreign Participation Order*, 12 FCC Rcd 23891, 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-12 (1997).

[7] 47 C.F.R. § 1.929. Moreover, Section 1.929(k) provides that "[a]ny change not specifically listed . . . as major is considered minor." 47 C.F.R. § 1.929(k). It is ironic that DISH makes this argument given that the DISH June 12 Letter also makes substantive, if insubstantial, arguments concerning the merits.

to urge the Commission to act promptly and grant their applications and petition for declaratory ruling in this proceeding.[8]

Respectfully submitted,

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[8] MVNO Association recently filed a letter asking the Commission to impose conditions related to resale. Letter from Karen Brinkmann, Counsel to MVNO Association, to Marlene H. Dortch, Secretary, FCC (June 12, 2013). The Commission should disregard this request because it is woefully late. *See* Public Notice DA 12-2090 at 4 ("A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. . . . Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission."). Aside from being untimely, the MVNO Association filing lacks merit. Neither Sprint nor SoftBank has proposed to change Sprint's current resale policies. Moreover, the Commission's mandatory commercial mobile radio service resale rule went out of effect in 2002. 47 C.F.R. § 20.12(b)(3). *See also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 34 (2011) (clarifying that the FCC's data roaming obligation does not create mandatory resale obligations); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, ¶ 35 (2010) (resale obligations "would not serve our goals of promoting facilities-based competition, the development of spectrum resources, and the availability of ubiquitous coverage"). MVNO Association fails to provide any basis for the Commission to alter its prior conclusions on these issues, particularly in the context of a merger proceeding.