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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:

DISH Network Corporation (“DISH”) responds to the June 13, 2013 letter filed by Sprint Nextel Corporation (“Sprint”) and SoftBank Corporation (“SoftBank” and together with Sprint, the “Applicants”) in the above-referenced proceeding (“Applicant’s Letter”).¹ The Applicants do not explain their earlier conclusory statement that “refinement” of the expected synergies justifies an almost 40% reduction in the promised investment in Sprint.² Instead, the Applicants’ Letter reads like a two-page summary of what would seem to be a new application. The original application relied heavily on the promised \$8 billion capital infusion into Sprint to justify its public interest conclusion; Applicants’ Letter, by contrast, provides a cursory review of a proposal that disavows any such reliance. The changed agreement is a “substantial amendment” that requires a public notice,³ and a new opportunity for comment by parties such as the New Jersey Rate Counsel, whom SoftBank tried to rebuff by citing the very commitment it has now abandoned.

¹ Letter from Sprint Nextel Corp., SoftBank Corp., Starburst I, Inc., and Starburst II, Inc. to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (June 13, 2013) (“Applicants’ Letter”).

² Sprint Nextel Corp., Current Report (Form 8-K) at Attachment EX-99.1, at 1 (June 11, 2013) (“[T]he reallocation of primary capital to Sprint stockholders is warranted given the companies’ refined operating and capital expenditures synergy expectations.”).

³ See 47 U.S.C. § 309(b) (requiring a 30-day public comment period for substantial amendments to applications).

Reading the original application, no one could have reasonably inferred that the cash infusion was irrelevant, or at most, the icing on the cake. Yet this is precisely what the Applicants press on the Commission now, when they state that their deal would serve the public interest even if SoftBank invested no money at all in Sprint.⁴ In fact, the application not only emphasized the capital infusion itself, but repeatedly referred to its size and scope:

The transaction is intended to invigorate competition by providing Sprint the financial resources needed to accelerate and expand its wireless broadband deployment. SoftBank's \$20.1 billion investment ***includes a direct infusion in Sprint of \$8 billion in new capital***, allowing Sprint to strengthen its balance sheet and lower its borrowing costs.⁵

The ***scale*** of SoftBank's direct infusion of capital into Sprint reflects SoftBank's strong commitment to the U.S. market. This new capital can be used to strengthen Sprint's operations in every way, creating a stronger competitor and benefitting consumers. ***SoftBank's investment, in and of itself, is a significant public interest benefit*** of the proposed transaction, as it will strengthen Sprint's balance sheet and make possible increased investment in its network and wireless broadband services, directly benefiting Sprint's customers.⁶

SoftBank, via its subsidiaries, will ***contribute an aggregate of \$8 billion to [Sprint's] balance sheet*** in conjunction with this transaction; these funds are unrestricted and Sprint will have the flexibility to use this capital infusion to strengthen its balance sheet and invest in its network and its wireless broadband service to customers.⁷

The transaction is ***designed to enable Sprint to take advantage of an \$8 billion capital infusion***, scale efficiencies, and SoftBank's expertise and resources as a leading mobile Internet company to provide better, more innovative broadband services to consumers throughout the United States.⁸

⁴ See Applicants' Letter at 2 ("Even if the Commission disregarded SoftBank's \$5 billion capital infusion entirely, this is not a close decision . . .").

⁵ Sprint Nextel Corp. and SoftBank Corp., IB Docket No. 12-343, Public Interest Statement, at i (Nov. 15, 2012) (emphasis added).

⁶ *Id.* at 1-2 (emphasis added).

⁷ *Id.* at 7-8 (emphasis added).

⁸ *Id.* at 13-14 (emphasis added).

The proposed transaction will provide an \$8 billion capital infusion that Sprint can use to increase investment in its network and improve wireless broadband service to its consumers.⁹

The proposed SoftBank transaction provides Sprint the financial resources needed to expand and accelerate its broadband investment program. *Sprint intends to invest part of SoftBank's \$8 billion capital infusion in its broadband network*, with the rest intended to improve Sprint's balance sheet and remain available for future strategic purposes.¹⁰

The proposed transaction can enable Sprint to accelerate this deployment by introducing LTE more rapidly in these various bands and in more markets. In addition, *with the financial resources provided by the SoftBank transaction, Sprint expects to expand the capacity of its broadband network* by deploying more LTE cell sites in high-traffic areas and small cells to increase capacity, speed, and network reliability.¹¹

The proposed transaction will give Sprint a capital infusion of \$8 billion, including \$3.1 billion that has already been provided to Sprint in the form of convertible debt and \$4.9 billion that will be provided at the time the proposed transaction closes. By strengthening Sprint's finances, the transaction will help Sprint expand and accelerate its broadband investment program.¹²

The proposed *\$8 billion infusion* is a substantial investment that Sprint almost certainly could not have raised through normal means in the U.S. credit markets (or could not have raised without incurring prohibitively high borrowing costs). This large capital infusion will help Sprint compete against other wireless providers, particularly the larger, better funded Bell companies.¹³

[T]he proposed transaction *will give the company the financial resources it needs* to accelerate its broadband investment program while also improving its balance sheet.¹⁴

⁹ *Id.* at 23 (emphasis added).

¹⁰ *Id.* at 24-25 (emphasis added).

¹¹ *Id.* at 24-25 (emphasis added).

¹² *Id.*, Declaration of Stephen J. Bye ¶ 5 (emphasis added).

¹³ *Id.* ¶ 6 (emphasis added).

¹⁴ *Id.* ¶ 7 (emphasis added).

And in brushing aside criticisms of their proposed transaction, the Applicants again relied heavily on the promised \$8 billion capital infusion into Sprint:

SoftBank will provide Sprint with the financial resources and deployment experience it needs to expand and accelerate its broadband investment program.¹⁵

SoftBank's \$8 billion capital infusion should enable Sprint to increase network investment by reducing its borrowing costs and enhancing its ability to raise additional capital.¹⁶

Misapprehending the nature of the Transactions, the NJ Rate Counsel expresses concerns that SoftBank's \$8 billion direct investment in Sprint is an "intention" and not a firm commitment *SoftBank's \$8 billion capital infusion, however, is not simply an intention. It is a firm commitment* There is thus no need for the Commission to seek any additional commitment or establish a timetable for the investment.¹⁷

SoftBank's investment is expected to strengthen Sprint's balance sheet, resulting in "greater financial stability and lower borrowing costs." *Sprint, by any measure, will be in a stronger financial position* as a result of the transaction with SoftBank.¹⁸

[The Communication Workers of America's] claims ignore *one of the key public interest benefits of the Transactions: the infusion of capital* and other synergies provided by SoftBank is expected to allow the Sprint and Clearwire networks to provide more robust LTE coverage.¹⁹

Yet the Applicants now aver that the "changes to the transaction" do not substantially affect the public interest analysis. How can this be so? One of the two pillars of the purported public benefits to the proposed transaction has been cut down in size by almost 40 percent.

¹⁵ Sprint Nextel Corp. and SoftBank Corp., IB Docket No. 12-343, Joint Opposition to Petitions to Deny, at 1 (Feb. 12, 2013) (emphasis added).

¹⁶ *Id.* at 10 (emphasis added).

¹⁷ *Id.* at 11 (emphasis added).

¹⁸ *Id.* at 12 (emphasis added).

¹⁹ *Id.* at 17 n.56 (emphasis added).

Contrary to the Applicants' assertion, they have provided no "analysis" to the Commission of the "minimal impact" the reduction in capital has on the public interest benefits of the transaction.²⁰

As to the poison pill defense, Applicants set up a straw man. DISH has not asserted that the pill sets in only when an American buys shares. Yet the effect of the poison pill is that no American entity can freely vie with SoftBank on the open market for control (before the transaction) or any significant influence (after it) over this country's third largest wireless provider. No American entity can do so without the threat of Sprint flooding the market with newly issued shares. This is an unusual combination of proposed foreign control and a mechanism for hampering substantial ownership by all others, including Americans.

What is more, pointing that fact out is no more xenophobic than is the Communications Act—that is, not at all. Section 310(b) of the Act requires a separate public interest review, over and above the standard applicable to the other transaction approvals, in the case of foreign acquisitions of telecommunications companies.²¹ The one-two combination of a foreign entity not only acquiring control but making it more difficult for others to vie for control or influence is relevant to this statutorily mandated review.

Finally, the applicants misread Section 1.929(k) of the Commission's rules. The list of major modifications to station authorizations that is found in that section is not the guide for determining if a public notice is required here. The guiding standard is set forth in the statute: Section 309(a) of the Communications Act requires the "issuance of public notice" not only of applications but also of "any substantial amendment thereof."²² There can be no reasonable doubt that the amended agreement between Softbank and Sprint qualifies as a "substantial amendment." The amendment renders much of the benefit discussion in the application irrelevant or incorrect; it has, incidentally, also been the subject of hundreds of stories in the worldwide press. The changes go to the heart of the Commission's public interest analysis. They are, by any measure, substantial.²³ Accordingly, the Commission should promptly issue a public notice so the public can comment on these substantial changes.

²⁰ See Applicants' Letter at 1.

²¹ See 47 U.S.C. § 310(b)(4).

²² *Id.* § 309(b).

²³ The error of the Applicants' argument is further highlighted by the illustrative list of minor filings in Section 1.929. The amended agreement is not akin to a name change, *pro forma* change of ownership, change of address and/or telephone number, or any of the other normal-course-of-business changes listed there. In any event, even under the Applicants' view, the Commission's discretion to place the changes on public notice is undeniable.

