



TECHNOLOGY • INNOVATION • INTERNATIONAL

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July 2, 2013

VIA Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20054

Re: Ex Parte Presentation
Joint Applications of Sprint Nextel Corporation, SOFTBANK CORP., and
Starburst II, Inc.
IB Docket No. 12-343

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, attached please find a copy of an e-mail sent on June 29, 2013, by Rudolph J. Geist, on behalf of The Consortium for Public Education and The Roman Catholic Diocese of Erie, PA, to the FCC staff shown on the email.

Should there be any questions regarding the foregoing or the attached, please contact the undersigned.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'RJG', is written over a horizontal line.

Rudolph J. Geist

Attachment

From: Rudy Geist

Sent: Saturday, June 29, 2013 9:26 AM

To: louis.peraertz@fcc.gov; michele.ellison@fcc.gov; courtney.reinhard@fcc.gov; david.goldman@fcc.gov; priscilla.argeris@fcc.gov; mindel.delatorre@fcc.gov; ruth.milkman@fcc.gov; sean.lev@fcc.gov; david.krech@fcc.gov; francis.gutierrez@fcc.gov; kathleen.collins@fcc.gov; paul.murray@fcc.gov; aaron.goldschmidt@fcc.gov; christopher.sova@fcc.gov; wayne.mckee@fcc.gov; transactionteam@fcc.gov; neil.dellar@fcc.gov; jim.bird@fcc.gov; fcc@bcpiweb.com

Cc: Rudy Geist

Subject: IB Docket 12-343, The Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania - Ex Parte Communication

EX PARTE COMMUNICATION

In re IB Docket No. 12-343

Dear Ladies and Gentlemen:

The undersigned counsel represents the Consortium for Public Education and the Roman Catholic Diocese of Erie, PA (“EBS Licensees”), with respect to their Consolidated Petition to Deny filed in Docket 12-343.

This email is in response to an unconfirmed June 27, 2013 report from Reuters purporting the Commission does not plan to ask for any spectrum divestitures with respect to this transaction. See <http://www.reuters.com/article/2013/06/27/us-clearwire-sprint-softbank-idUSBRE95Q1J120130627>

In their filings in this proceeding, the EBS Licensees described in detail why the Commission must include in its spectrum screen the EBS and BRS spectrum not already included in the screen, and must therefore conclude that the post-merger entity would hold an impermissible amount of spectrum in most U.S. markets, such that divestitures are required.

See <http://apps.fcc.gov/ecfs/document/view?id=7022121109>

<http://apps.fcc.gov/ecfs/document/view?id=7022124953>

<http://apps.fcc.gov/ecfs/document/view?id=7022280613>

Both Dish Network and Verizon have pursued spectrum purchases from Clearwire in this transaction process, and most likely stand ready to acquire any spectrum to be divested. It appears if the Applicants divested just 2 of the 8 EBS/BRS channel groups they control, that would likely satisfy divestiture requirements and the spectrum needs of the prospective buyer(s). This would not only preserve some U.S. ownership of the 2.5 GHz band (and particularly the EBS that is most likely to be divested in this scenario), but would provide much needed

competition in the 2.5 GHz spectrum from numerous standpoints (including competition in spectrum leasing, equipment development, etc.).

Clearwire has previously stated they do not need the massive swath of 2.5 GHz spectrum they have aggregated for purposes of deploying next generation TD-LTE services on three 20 MHz carriers. And in fact, because of the technical configuration of Clearwire sites employing TD-LTE base stations and that are also being used to simultaneously operate a WiMAX network on three 10 MHz carriers, it is technically impossible for Clearwire to be using only the 55 MHz of BRS for mobile broadband that is currently included in the spectrum screen. This conclusively proves that substantial amounts of EBS are also currently being deployed and in use for mobile broadband. There is simply no plausible argument to keep any EBS, including all EBS mid band that is also fully usable for mobile broadband, from inclusion in the screen. There is also no plausible argument to keep any BRS out of the screen that is not currently included in the screen. The Applicants certainly have not even attempted to dispute they are not currently using all parts of the 2.5 GHz band for mobile broadband except to rely on the same old arguments about usability and characteristics of the spectrum that simply have been disproved by their own actions.

If the EBS/BRS spectrum currently being used for mobile broadband is not included in the screen in this transaction, it would be an abrogation of the public interest and the Commission's responsibility to fail to apply the rules evenly to all carriers and in all merger transactions. If the appropriate amount of EBS/BRS is included in the screen, the Commission must determine that broad scale divestitures are required based on the sheer amount of mobile spectrum that would be controlled by the post-merger entity (about 220-250 MHz per market), and condition the approval of the transaction accordingly.

As former Commissioner Adelstein said in his concurring statement approving the AT&T-BellSouth merger proceeding in 2007, where the Commission adopted a voluntary condition of the parties to divest 2.5 GHz spectrum (which spectrum Clearwire ultimately acquired but still has not meaningfully deployed in the vast majority of markets):

“A historic merger warrants historic conditions. I don't pretend that we addressed every possible issue presented here or that it is possible, or even appropriate in this context, to try to rectify years of decisions that have undercut competition.”

The merger at issue is also a historic merger, involving a decision to allow a foreign company to control by far the largest swath of prime broadband spectrum in the U.S. (even if 40-50 MHz is divested). A divestiture in this proceeding would assure the post-merger entity more than sufficient spectrum to become a competitive force in the U.S. market, but also make available much needed spectrum to U.S. companies.

This Commission must make sure that its decision is the right one for American consumers and U.S. wireless companies in need of additional spectrum. And the Commission must make sure it applies its spectrum screen rules uniformly to all merger transactions.

Therefore, the Commission must find that divestitures are required in this transaction to prevent a foreign company from amassing unneeded valuable airwaves that U.S. companies stand ready to acquire, as doing so will assure large amounts of 2.5 GHz spectrum do not continue to be warehoused and are actually developed for the benefit of U.S. consumers.

Respectfully submitted,

Rudy Geist

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