Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Joint Applications of Sprint Nextel Corporation, Transferor,	)	
	)	
SOFTBANK CORP., and Starburst II, Inc., Transferees,	)	IB Docket No. 12-343
	)	
for Consent to Transfer of Control of Licenses and Authorizations	)	
	)	
and	)	
	)	
Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended	)	

JOINT OPPOSITION TO PETITIONS TO DENY AND REPLY TO COMMENTS

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February 12, 2013

SUMMARY

SOFTBANK CORP.'s ("SoftBank's") entry into the U.S. market has the potential to invigorate competition and accelerate the deployment of next-generation wireless broadband services, bringing faster networks and cutting-edge wireless devices to U.S. consumers. As SoftBank and Sprint Nextel Corporation ("Sprint") (SoftBank and Sprint, together with Starburst I, Inc. and Starburst II, Inc. ("Starburst II"), the "Applicants") demonstrated in their public interest statement, the potential public interest benefits of a SoftBank/Sprint combination are substantial and the potential for competitive harm is non-existent. In addition to its approximately $12.1 billion purchase of Sprint shares, SoftBank will invest a total of $8 billion directly in Sprint which, in turn, plans to purchase the shares of Clearwire Corporation ("Clearwire") that it does not already own. The combined entity will have the scale and resources to better compete with the two dominant wireless providers, AT&T Inc. ("AT&T") and Verizon Wireless, in terms of service, prices, technology, and consumer devices. Consumers should benefit from better, faster mobile broadband services and more choices.

By partnering with Sprint and Clearwire, SoftBank promises to enhance competition in a U.S. wireless marketplace that is trending dangerously toward duopoly, just as SoftBank did in Japan with its 2006 entry into the wireless marketplace there. By investing in its network, offering new and innovative devices, implementing attractive pricing plans, and intensely focusing on the needs and desires of consumers, SoftBank turned the Japanese market around. In the same way, SoftBank will provide Sprint with the financial resources and deployment experience it needs to expand and accelerate its broadband investment program. SoftBank's investment is expected to provide Sprint/Clearwire with financial stability, lower borrowing costs and greater access to capital. The combined company should have a global subscriber base

that can help lower device and equipment costs, and should be an attractive partner to vendors in designing and developing new mobile technologies.

Arrayed against this substantial promise of more robust, consumer-enhancing competition are petitions to deny that seek to raise private business disputes that have nothing to do with these transactions or to bolster positions in pending shareholder litigation that lie well beyond this Commission's jurisdiction. There is not a single credible argument to deny or place conditions on these transactions, and they should be swiftly approved by the Commission.

The Transactions Promise to Promote Competition and Enhance Wireless Broadband Services

Tellingly, not a single competitor of Sprint or Clearwire raises any concern that these transactions will harm competition. On the contrary, even parties that often oppose wireless transactions, such as the New Jersey Division of Rate Counsel (the "NJ Rate Counsel") and the Greenlining Institute ("Greenlining"), recognize the potential of these transactions to increase competition and consumer welfare.

The modest misgivings raised by these groups are misplaced. Greenlining, for example, is concerned that the proposed transactions might undermine service to low-income customers. To the contrary, the transactions promise to strengthen the wireless service already provided over the Sprint/Clearwire spectrum holdings, including offerings attractive to low-income subscribers. SoftBank's history in Japan shows its commitment to value-priced services. The NJ Rate Counsel, apparently misapprehending the nature of the transactions, is concerned that SoftBank's $8 billion cash infusion is insufficiently firm. To be clear, SoftBank is contractually committed to make that contribution and already has provided $3.1 billion to Sprint in the form of a convertible bond. Contrary to the vague assertions of Taran Asset Management ("Taran"), the proposed transactions will cause no competitive harm to new entrants or the wholesale

marketplace. Nearly all of Clearwire's wholesale business already comes from Sprint, and there are alternatives for wholesale customers in the marketplace.

Concerns raised by other commenters regarding the transactions' potential public interest benefits can be dismissed. There is no basis, for example, to assume that additional broadband deployment will not occur or that any additional build-out requirements are necessary. With a stronger financial foundation and SoftBank's expertise, the Applicants expect to accelerate broadband deployment over the Sprint/Clearwire spectrum. Indeed, as demonstrated by its deployment of wireless services in Japan, SoftBank has a history of completing build-outs ahead of schedule. The transactions are expected to increase the speed, coverage, reliability, and capabilities of the Sprint and Clearwire wireless broadband networks, so that Sprint and Clearwire can offer consumers a more competitive choice in a broadband world. In addition, there is no reason to assume the combined entity's post-transaction debt position would thwart the transactions' potential benefits. The combined company will have a debt burden comparable to AT&T and Verizon Wireless and SoftBank has a history of repaying its debt promptly, along with the resources to do so.

Foreign Ownership and National Security Concerns Will Be Addressed

The Applicants comply with the requirements under the Commission's *Foreign Participation Order* and are entitled to the presumption that SoftBank's investment is in the public interest. There is no "higher bar" to surmount, as suggested by the Communications Workers of America ("CWA"). The arguments by the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania (the "Consortium") regarding indirect foreign ownership of Clearwire's licenses and lease rights also are meritless because there is no limitation on foreign ownership of non-common carrier radio licenses and because there is no

reason to believe that a licensee with indirect foreign ownership would act any differently than a U.S.-owned licensee.

CWA's purported concern over potential threats to national security is equally misplaced. Any legitimate national security concerns will be addressed in the ongoing review by Team Telecom, a federal interagency group that reviews the applications for potential national security, law enforcement, and public interest concerns, as well as the Committee on Foreign Investment in the United States ("CFIUS"), a second interagency group that evaluates and, if necessary, mitigates potential national security risks related to any foreign acquisition of a U.S. business. These two overlapping regulatory reviews will give expert agencies ample opportunity to thoroughly assess the applications for such issues. The Commission need not do more than adopt any conditions these agencies may place on the transactions.

The Transactions Raise No Spectrum Aggregation Concerns

The SoftBank/Sprint and Sprint/Clearwire transactions raise no spectrum aggregation concerns. SoftBank has no attributable interests in U.S. wireless licenses or leases, and the Commission already reviewed and approved the aggregation of the Sprint/Clearwire spectrum holdings in approving the 2008 Sprint/Clearwire transaction. As the Clearwire spectrum has been attributed to Sprint since 2008, there is no need to rehash the Commission's finding that the aggregation of these holdings serves the public interest. In addition, there is no justification for revising the Commission's spectrum screen, as proposed by Verizon Wireless. The Commission has repeatedly and recently found that it should count 55.5 MHz of Broadband Radio Service ("BRS") spectrum and no Educational Broadband Service ("EBS") spectrum under its screen. Moreover, the record in the pending spectrum aggregation rulemaking confirms the appropriateness of the Commission's prior finding.

Non-Transaction Specific Concerns

Many of the remaining issues raised in the record are either non-transaction specific, such as individual intercarrier compensation disputes, or are beyond the Commission's jurisdiction, such as private shareholder disputes raised by Crest Financial Limited ("Crest") and Taran. Under well-established precedent, the Commission consistently refuses to intervene in such matters, particularly where, as is the case here, petitioners have initiated litigation in the courts regarding such claims.

Other Issues

CWA and Greenlining make arguments concerning the effects of the proposed transactions on jobs. Because the Applicants did not assert that any job-related public interest benefits would result from the transaction, these claims are not relevant. Further, there is no basis for Greenlining's proposed investigation into potential, speculative changes in the terms of employment for Sprint employees. The Consortium's claims concerning EBS issues are not transaction specific. They also are wrong on the merits, as Clearwire's leases comply with all applicable requirements.

* * * * *

The public interest analysis of these transactions is straightforward. The transactions will produce substantial public interest benefits with no countervailing public interest harms. SoftBank's acquisition of a controlling interest in Sprint, and Sprint's acquisition of full ownership of Clearwire, promise to strengthen the wireless services provided by the merged entity, resulting in more robust and innovative mobile broadband services for the U.S. consumer. The Commission should grant the amended applications expeditiously.

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JOINT OPPOSITION TO PETITIONS TO DENY AND REPLY TO COMMENTS

I. Introduction

Sprint Nextel Corporation, Starburst I, Inc., Starburst II, Inc., and SOFTBANK CORP. hereby submit their Joint Opposition to Petitions to Deny and Reply to Comments in the above-captioned proceeding.[1] The record strongly supports expeditious and unconditional approval of the license transfer applications filed in this proceeding (the "Applications"). Clearwire has authorized the Applicants to state that Clearwire also opposes the petitions to deny and the conditions proposed in the comments.

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[1] *See* Public Notice, *SoftBank and Sprint Seek FCC Consent to the Transfer of Control of Various Licenses, Leases, and Authorizations from Sprint to SoftBank, and the Grant of a Declaratory Ruling Under Section 310(b)(4) of the Communications Act*, IB Docket No. 12-343, DA 12-1924 (rel. Nov. 30, 2012) (establishing pleading cycle); Public Notice, *SoftBank and Sprint File Amendment to Their Previously Filed Applications to Reflect Sprint's Proposed Acquisition of De Facto Control of Clearwire*, IB Docket No. 12-343, DA 12-2090 (rel. Dec. 27, 2012) (extending pleading cycle).

In the initial Applications, the Applicants sought Commission consent to SoftBank's acquisition of an approximately 70 percent controlling interest in Sprint (the "SoftBank/Sprint Transaction"). In a subsequent amendment, the Applicants sought the Commission's consent to Sprint's acquisition of the shares of Clearwire that Sprint does not already own (the "Sprint/Clearwire Transaction") (together with the SoftBank/Sprint Transaction, the "Transactions"). Under the proposed Sprint/Clearwire Transaction, Sprint will obtain direct *de facto* control and SoftBank and Starburst II will obtain indirect *de facto* control of Clearwire, in addition to the *de jure* control Sprint already holds.

Some parties have filed comments expressing support for the Transactions, recognizing their potential to invigorate competition in the U.S. wireless marketplace. Others have filed petitions to deny or asked the Commission to condition its approval of the Transactions. For the reasons set forth below, the Commission should deny these petitions and requests for conditions. Many of the claims raised by the petitioners fall well outside the Commission's jurisdiction or have no connection whatsoever to the Transactions. The remaining assertions provide no basis for denying or conditioning the Commission's approval, which should be granted promptly.

II. The Transactions Promise to Enhance Competition and the Deployment of Next-Generation Wireless Broadband Services.

The record provides no basis to infer that the Transactions will cause any potential competitive harm. To the contrary, the record reinforces the promise of increased competition and concomitant consumer benefits described by SoftBank and Sprint in the Public Interest Statement.[2] The Transactions also provide the potential for substantial public interest benefits arising from the acceleration of Sprint's wireless broadband deployment. The specific benefits

[2] Public Interest Statement, attached as Exhibit 2 to Joint Applications for Consent to Transfer International and Domestic Authorization Pursuant to Section 214, IB Docket No. 12-343, at 13-29 (Nov. 15, 2012) ("Public Interest Statement").

identified by the Applicants include enhanced economies of scale resulting from a larger customer base and the strong experience that SoftBank will bring to the U.S. wireless marketplace based on its own highly successful effort to promote competition in Japan in the face of an entrenched duopoly.[3]

When evaluating merger transactions, the Commission uses a sliding scale that balances likely competitive harms against potential public interest benefits.[4] In this case, the record has not revealed any likelihood of potential competitive harm. Even staunch opponents of past wireless acquisitions, such as Greenlining and the NJ Rate Counsel, conclude that the Transactions can enhance competition and consumer welfare. Nothing in the record remotely calls into question the potential for the Transactions to achieve these customer welfare-enhancing public interest benefits.

A. The Transactions Promise to Promote Competition.

SoftBank's acquisition of Sprint/Clearwire promises to create a stronger, more robust competitor capable of disrupting the existing dynamics of the U.S. mobile wireless marketplace, which is trending dangerously toward duopoly. The record contains no evidence that contradicts this procompetitive benefit or, conversely, that provides any credible basis to predict any likelihood of competitive harm. Tellingly, and in sharp contrast to other recent wireless transactions, no wireless competitor has argued that the Transactions could harm competition.[5]

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[3] *Id.* at 21-22.

[4] *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses,* Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, ¶¶ 98, 111 (2012) ("*Verizon Wireless-SpectrumCo Order*").

[5] In contrast, numerous competing carriers filed petitions to deny or otherwise opposed other recently proposed wireless transactions based on concerns that the transaction would result in competitive harm. For example, in the proposed AT&T/T-Mobile USA, Inc. merger, petitions to deny or oppositions were filed by, among others, Sprint, the Rural Telecommunications

The sole wireless carrier to comment, Verizon Wireless, takes no position on the merits of the Transactions.[6]

The public interest groups and consumer advocates that filed comments recognize that the Transactions have the potential to enhance competition and benefit consumers. The NJ Rate Counsel notes that the potential for the Transactions to "partially erode AT&T's and Verizon Wireless' dominance of wireless markets" could "increase competition in the wireless market, which, in turn, would benefit consumers."[7] Following a lengthy review of the structure of the current wireless marketplace, the NJ Rate Counsel concludes that "the proposed transaction does not increase concentration in the mobile wireless market and may break the market power of the duopoly that now exists."[8] Greenlining similarly states that, "as a result of the proposed

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Group, the Rural Cellular Association, Cellular South, Inc., Leap Wireless International, Inc., King Street Wireless, L.P., MetroPCS Communications, Inc. and NTELOS, Inc., Cincinnati Bell Wireless LLC, CREDO Mobile, Green Flag Wireless, LLC, and Iowa Wireless Services, LLC. *See* WT Docket No. 11-65 (Petitions filed May 31, 2011). In the AT&T/Qualcomm Incorporated proceeding, the Rural Telecommunications Group, the Rural Cellular Association, and Cellular South, Inc. filed petitions to deny. *See* WT Docket No. 11-18 (Petitions filed March 11, 2011). In the Verizon Wireless/ALLTEL Corporation proceeding, the Rural Telecommunications Group, Leap Wireless International, Inc., Cellular South, Inc., Centennial Communications Corp., MetroPCS Communications, Inc., Ritter Communications Inc. and Central Arkansas Rural Cellular Limited Partnership, and Palmetto MobileNet, L.P., filed petitions to deny. *See* WT Docket No. 08-95 (Petitions filed Aug. 11, 2008).

[6] Comments of Verizon Wireless at 1 (Jan. 28, 2013) ("Verizon Wireless Comments"). The sole Verizon Wireless argument concerns adding more BRS/EBS spectrum to the Commission's spectrum screen, which should be rejected for the reasons set forth in Section IV(B) below. (Unless otherwise indicated, all comments and petitions cited herein were filed in IB Docket No. 12-343.)

[7] Comments of the New Jersey Division of Rate Counsel at 8 (Jan. 28, 2013) ("NJ Rate Counsel Comments"). The NJ Rate Counsel succinctly summarizes the decidedly procompetitive benefit of the Transactions: "The proposed transaction has the potential to be in the public interest because it could: (1) increase the level of wireless competition in a market that a duopoly (consisting of AT&T and Verizon Wireless) now dominates; and (2) lead to new and substantial investment in the nation's wireless network that might not otherwise occur." *Id.* at ii.

[8] *Id.* at 16.

transaction, Sprint could emerge as a 'maverick' company with the power to disrupt the wireless market, driving down prices and increasing quality of service."[9]

Even opponents of the Transactions concede that the merged entity poses no competitive threat to retail customers. For example, Taran states "we agree that there will be no competitive harm from consolidation of Clearwire's 1.4mm retail customers with Sprint."[10] Nor is there any basis for assertions concerning the provision of wholesale services. Taran, the only entity to raise such concerns, erroneously suggests that Sprint's acquisition of Clearwire could eliminate an independent source of wholesale access for smaller, startup ventures.[11] Taran ignores the reality of Clearwire's wholesale business, which relies almost entirely on Sprint. As Clearwire explained in its 2011 Annual Report, "the vast majority of our wholesale subscribers and wholesale revenues came from Sprint and we expect that to continue for the foreseeable future."[12] Of Clearwire's roughly $494 million in wholesale receipts in calendar year 2011,

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[9] Opening Comments of the Greenlining Institute at 1 (Jan. 28, 2013) ("Greenlining Comments"). Greenlining expresses "some concerns" about "the proposed transaction's potential impacts on low-income communities and communities of color." *Id*. at 2. For the reasons set forth below, these concerns are misplaced and the Commission should reject Greenlining's invitation to launch a series of open-ended investigations. *See infra* Sections VI, VII(E).

[10] Petition to Deny of Taran Asset Management at 5 (Jan. 22, 2013) ("Taran Petition"). Taran makes the peculiar suggestion that the lack of competitive harm to retail markets is irrelevant to the Commission's public interest review, which, it claimed, "rests solely on the highest and best use of the input, the spectrum." *Id*. The statement is wrong. The Commission's public interest review assesses potential competitive effects in relevant markets based on increased concentration and market share, as well as other relevant considerations, such as concentration of spectrum assets. *See, e.g., Verizon Wireless-SpectrumCo Order,* ¶¶ 28, 47 n.113. The Taran "highest and best use" theory would require the Commission to evaluate alternative transactions, which is forbidden by the Communications Act of 1934, as amended ("Act" or "Communications Act"). 47 U.S.C. § 310(d).

[11] Taran Petition at 2-3.

[12] Clearwire, Annual Report (Form 10-K), at 7 (Feb. 16, 2012), http://corporate.clearwire.com/secfiling.cfm?filingID=1445305-12-337&CIK=1442505 ("Clearwire 2011 Annual Report"); *see also id*. at 2 (noting that Sprint "accounts for

approximately $434 million came from Sprint.[13] Virtually all future wholesale revenues were expected to come from Sprint as well.[14] As a result, the Transactions will have little, if any, impact on the wholesale service market.

Apart from Sprint, Clearwire's wholesale operation is not currently viable as a stand-alone business, and it has limited revenue opportunities beyond Sprint, as recently affirmed by Clearwire's CEO, Erik Prusch:

> In pursuing our wholesale business, we have spent time with virtually every potential customer who could deliver the revenue we need for our business. While we have landed terrific small new customers, none has the scale and revenue potential to make our wholesale business viable over the long term.[15]

Taran effectively admits in its Petition that Clearwire's wholesale efforts have been largely unsuccessful. After listing a number of "partners or ex-partners" of Clearwire, Taran notes that "these business models and partnerships have not yet flourished and most have failed."[16]

Taran nevertheless suggests that the Commission should impose an open network, wholesale requirement on post-transaction Clearwire as a condition of the merger.[17] The

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substantially all of our wholesale sales to date" and further noting that "almost all" of Clearwire's 5.9 million new wholesale customers in 2011 came from Sprint); Clearwire, Preliminary Proxy Statement (Form PREM14A), at 13 (Feb. 1, 2013) ("Since the formation of the Company, Sprint has been the Company's largest wholesale customer accounting for substantially all of the Company's wholesale revenue . . .) ("*Clearwire Proxy Statement*"), http://corporate.clearwire.com/secfiling.cfm?filingID=1193125-13-33200&CIK=1442505.

[13] Clearwire 2011 Annual Report at 1, 110.

[14] In 2011, Sprint agreed to pay Clearwire a total of $925.9 million for wholesale WiMax services in 2012 and 2013, with approximately two-thirds payable in 2012. Clearwire 2011 Annual Report at 110.

[15] Transcript of Sprint Nextel Corporation and Clearwire Corporation Investor Call (Dec. 17, 2012) at 5, http://www.sec.gov/Archives/edgar/data/101830/000119312512505069/d456300ddfan14a.htm. *See also Clearwire Proxy Statement* at 27, 35 (describing unsuccessful, extensive efforts by Clearwire to attract a second significant wholesale customer).

[16] Taran Petition at 3.

[17] *Id.* at 4.

Commission should reject any attempt to impose a wholesale service requirement. The Commission long ago eliminated such requirements on wireless carriers, and it has repeatedly rejected proposals for mandatory wholesale access.[18] It would be wholly unreasonable to impose such an obligation on one wireless carrier while others, including the two largest providers, AT&T and Verizon Wireless, face no such constraints on the use of their networks or service offerings.[19]

Imposing a wholesale condition also is unnecessary. Clearwire, of course, will continue to honor its contractual wholesale obligations with existing customers following consummation of the Sprint/Clearwire Transaction. Apart from that, there is a range of wireless providers, including nationwide carriers, that provide wholesale services today and there is every expectation that they will continue to do so going forward.[20] Indeed, Sprint is a significant

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[18] *See, e.g., Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket No. 12-70, Report and Order and Order of Proposed Modification, FCC 12-151, ¶ 24 (rel. Dec. 17, 2012) (*"AWS-4 Order"*) (declining to impose any mandatory wholesale requirements in AWS-4 service rules proceeding); *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"); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands,* Second Report and Order, 22 FCC Rcd 15289, ¶ 205 (2007) (rejecting argument for mandatory wholesale requirement in Upper 700 MHz Band service rules proceeding).

[19] 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,* Report and Order*,* 22 FCC Rcd 15817, ¶ 51 (2007).

[20] *See, e.g.,* Verizon Wireless, "Verizon Wireless Wholesale Solution," http://www.verizonwireless.com/b2c/aboutUs/reseller/index.jsp (visited Feb. 5, 2013); AT&T, "Wireless Provider Customer Solution," http://www.business.att.com/wholesale/industry-solutions/wireless-providers-wholesale/ (visited Feb. 5, 2013).

provider of wholesale capacity,[21] and was the first U.S. wireless carrier to make 4G available to wholesale customers.[22] Moreover, any facilities-based wireless carrier that is not already providing wholesale service can easily and quickly begin offering wholesale access over facilities it already has deployed to provide its retail wireless service. The proposed Sprint/Clearwire Transaction will in no way harm competition in the provision of mobile wholesale services.

Greenlining, after noting that the "proposed transaction arguably does not raise any concerns under the Commission's traditional antitrust analysis," expresses concern that the SoftBank/Sprint Transaction "could . . . eliminat[e] competition in the market for low-cost phone service" and calls for an investigation into the Transactions' effect on low-income consumers.[23] Greenlining's concerns are purely speculative and provide no basis for launching any investigation. The information contained in Greenlining's filing in fact undermines its concern. Greenlining notes, for example, that Sprint has "traditionally offered phone services that are somewhat more affordable to low-income customers."[24] It further reports statements by Sprint made during meetings with Greenlining and other public interest groups that Sprint has no intent

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[21] *See* Randall Stross, *Mixing, Matching and Charging Less for a Phone Plan*, THE NEW YORK TIMES, Jan. 26, 2013, http://www.nytimes.com/2013/01/27/business/republic-wirelesss-plan-melds-wi-fi-and-network-calling.html?_r=0; News Release, Sprint, *Sprint Single Source Enablement Offers Turnkey Solution for Companies Wanting to Enter the Wireless Industry* (July 17, 2012) (describing wide array of wholesale offerings provided by Sprint), http://newsroom.sprint.com/article_display.cfm?article_id=2333.

[22] News Release, Sprint, *Another Industry First: Sprint Becomes First U.S. Wireless Carrier to Make 4G Available to Wholesale Customers* (Aug. 2, 2011), http:// newsroom.sprint.com/article_display.cfm?article_id=1996; *see also* Sprint, "Wholesale Solutions," http:// wholesale.sprint.com (viewed Feb. 8, 2013).

[23] Greenlining Comments at 5. The Commission never has identified low-cost wireless phone service as a separate relevant product market for merger competitive analysis. The Applicants nevertheless address Greenlining's concerns regarding the provision of service to low-income consumers.

[24] *Id*.

to curtail its efforts, including providing wireless Lifeline services through Sprint's Assurance Wireless brand and providing free phones for the homeless.[25] Notwithstanding these statements, Greenlining appears to speculate that SoftBank might force Sprint to stop providing such service offerings and calls for some form of investigation.[26]

There is nothing in SoftBank's history that would warrant such speculation. To the contrary, SoftBank's history is one of reducing consumer prices while expanding opportunities for all consumers, which especially benefitted low-income consumers, to access wireless technology. As noted in the Public Interest Statement, following entry into the Japanese mobile wireless market, SoftBank introduced a pricing plan that dramatically reduced basic monthly rates from 2,880 yen (approximately $31) to 980 yen (approximately $10.60), initiated free calling among SoftBank customers during certain hours, and instituted an installment sales plan that allows consumers to obtain a new handset without upfront costs.[27] As part of the installment plan, consumers received discounts on their monthly rates, effectively offsetting some or all of the installment payments for the device, depending on the cost of the device. For many

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[25] *Id*.

[26] Greenlining's concerns seem primarily animated by its request at a meeting held among representatives of Sprint, Greenlining, and other public interest groups that Sprint "guarantee[] that there would be no changes in service." *Id.* at 3. No reasonable business venture could proffer such a guarantee and there are no reasonable policy grounds on which to tie a company's hands in such a manner, particularly in a fast moving dynamic marketplace such as wireless.

[27] In what appears to be a preemptive response to SoftBank's potential entry into the United States market, T-Mobile recently announced that it would offer similar installment plans. *See* Jared Newman, *T-Mobile's New Plan: Goodbye Subsidies, Hello Installments,* TIME, Dec. 10, 2012, http://techland.time.com/2012/12/10/t-mobiles-new-plan-goodbye-subsidies-hello-installments/.

customers, the service discount fully offsets the installment payment, effectively resulting in a free phone.[28]

Moreover, Greenlining's claims of potential competitive harm ignore that many wireless service providers today actively compete to serve low-income consumers. All major providers have tailored products and efforts to serve low-income consumers, including participation in the Lifeline program, and a number of providers specifically target this customer segment.[29] There is simply no basis to assume that the Transactions will have any adverse effect on the availability of wireless services to low-income consumers.[30]

B. The Transactions Promise to Promote Wireless Broadband Deployment.

As noted in the Public Interest Statement, the Transactions "will further the FCC's broadband goals by providing Sprint greater financial resources, scale economies, and expertise

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[28] Public Interest Statement at 17. *See also id.* at 21 n.58 (noting that SoftBank had established itself as a low-cost carrier).

[29] *See*, *e.g.*, T-Mobile, "Low-Cost Monthly Rate Plans," http://www.t-mobile.com/shop/Packages/ValuePackages.aspx (visited Feb. 5, 2013); Verizon Wireless, "Lifeline Program," http://www.verizonwireless.com/b2c/landingpages/lifeline.jsp (visited Feb. 5, 2013); AT&T, "Lifeline," http://www.wireless.att.com/learn/articles-resources/community-support/lifeline-link-up.jsp (visited Feb. 5, 2013); Tracfone Wireless, Inc., "Why Tracfone?," http://www.tracfone.com/facelift/tour.jsp#a_whytrac (visited Feb. 5, 2013) ("We offer the least expensive way to own and use a cell phone in America.") (visited Feb. 5, 2013); Consumer Cellular, "The Consumer Cellular Advantage," http://www.consumercellular.com/Info/Advantage ("Low, Low Prices") (visited Feb. 5, 2013); Sam Gustin, *Walmart to Offer Low-Cost Wireless Services Across the U.S.*, DAILY FINANCE (Oct. 15, 2009), http://www.dailyfinance.com/2009/10/15/walmart-to-offer-low-cost-wireless-service-across-the-u-s/; Walmart, "Cell Phones," http://www.walmart.com/cp/cell-phones-accessories/542371 (visited Feb. 5, 2013).

[30] The NJ Rate Counsel suggests that the Applicants "could commit to implement" a program to provide subsidized wireless Internet access services to income-eligible families along the lines of the program offered by Comcast Corporation as part of its transaction with NBC Universal. NJ Rate Counsel Comments at 26-27. As the NJ Rate Counsel notes, that program was instituted in the midst of a controversial transaction that resulted in the imposition of numerous conditions, a far cry from the instant transactions. The NJ Rate Counsel does not propose the program as a condition of the Transactions, nor would such a condition be warranted.

to deploy wireless broadband service more aggressively and offer consumers innovative new mobile Internet services and applications."[31] 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. Sprint will be able to draw on SoftBank's expertise and resources as one of the world's leading mobile Internet innovators as well as SoftBank's expertise in deploying advanced network technologies. The Transactions are expected to enable the combined company to participate more effectively in the increasingly global ecosystem of equipment and devices. With minor exceptions, discussed below, petitioners and commenters raised no questions regarding these pro-consumer, competition-enhancing public interest benefits.

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. It therefore recommends that Applicants submit a timetable for this investment and commit to a rollout of 4G LTE tied to this investment timeline.[32] SoftBank's $8 billion capital infusion, however, is not simply an intention. It is a firm commitment. In fact $3.1 billion of this amount already has been provided to Sprint in the form of a convertible bond, and SoftBank is contractually committed to provide the remaining $4.9 billion when the SoftBank/Sprint Transaction closes.[33] There is thus no need for the Commission to seek any additional commitment or establish a timetable for the investment.

In its petition, Crest raises concerns that SoftBank's investment will result in excessive debt burdens that will curtail Sprint's ability to deploy products of "lasting value for consumers"

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31 Public Interest Statement at 23.

32 NJ Rate Counsel Comments at 16, 24.

33 *See* Public Interest Statement at 8 n.10, 23 n.64.

and instead force the company to deploy products that generate immediate cash flow.[34] Crest is wrong. SoftBank's investment directly addresses Sprint's current "highly leveraged" balance sheet, which causes Sprint's current borrowing costs to be above those currently incurred by AT&T and Verizon Wireless.[35] SoftBank's investment is expected to strengthen Sprint's balance sheet, resulting in "greater financial stability and lower borrowing costs."[36] Sprint, by any measure, will be in a stronger financial position as a result of the transaction with SoftBank.

Crest's real concern seems to be that SoftBank will incur additional debt to finance its investment in Sprint. With a market capitalization of $44.5 billion, however, SoftBank is a strong, financially sound company that can accommodate this debt.[37] Since its acquisition of Vodafone Group's Japanese wireless operations in 2006, SOFTBANK MOBILE Corp. ("SoftBank Mobile") is the only Japanese wireless company that has shown continuous, year-over-year growth, and its operating margin and mobile EBITDA margins currently exceed that of Verizon Wireless, AT&T, NTT DOCOMO and KDDI CORPORATION.[38] SoftBank's strong financial performance is most recently reflected in financial reports for its third quarter ending in December 2012. SoftBank reported a doubling of net profits in the quarter ending in December 2012 over the same period the previous year (¥65.93 billion or about $724 million in the quarter ending in December 2012 versus ¥32.83 billion in the quarter ending in December 2011) and a 24 percent increase in operating profit (to ¥197.39 billion or about $2.1 billion) on a 7 percent

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[34] Petition to Deny of Crest Financial Limited at 26, 35-36 (Jan. 28, 2013) ("Crest Petition").

[35] Public Interest Statement at 23.

[36] *Id.* at 23-24.

[37] Market capitalization is calculated as of the February 7, 2013 market close.

[38] SoftBank, "Earnings Results for the Nine-Month Period Ended December 31, 2012," at 9-11 (Jan. 31, 2013), http://www.softbank.co.jp/en/design_set/data/irinfo/library/presentation/results/pdf/2012/softbank_presentation_2012_003.pdf ("*3Q 2012 Earnings Report*").

increase in sales (to ¥923.68 billion or about $10.1 billion).[39] Once combined, SoftBank, Sprint, and Clearwire will have substantial resources. Post-transaction, SoftBank/Sprint will be the third largest global wireless provider measured by mobile revenues.[40] Smartphone sales of the combined entity will approach 22 million units, giving the combined company scale comparable to that of Verizon and AT&T.[41]

Crest's claims also are belied by SoftBank's strong record of rapidly repaying debt. SoftBank incurred approximately $16.7 billion in debt to acquire Vodafone's Japanese mobile operations in 2006, which was originally slated to be repaid by 2018. Instead, SoftBank fully repaid that debt by 2011, seven years ahead of schedule.[42] During the period between June 2006 and June 2012, SoftBank reduced its net debt by nearly half, from $34.2 billion to $18.6 billion.[43] Although SoftBank's borrowing to finance the SoftBank/Sprint Transaction will increase that debt, SoftBank will hardly be in a "net cash predicament" as Crest wrongfully claims.[44] Following the SoftBank/Sprint Transaction, the combined company (SoftBank and Sprint, excluding Clearwire) is anticipated to have a net debt-to-EBITDA multiple of 2.7, far below the 5.6 net-debt-to-EBITDA multiple that SoftBank experienced following the 2006

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[39] Associated Press, *Softbank 3Q Net Profit Doubles on iPhone, iPad Sales, but April-Dec. Earnings Down,* WASHINGTON POST, Jan. 31, 2013, http://www. washingtonpost.com/business/ technology/softbank-3q-net-profit-doubles-on-iphone-ipad-sales-but-april-dec-earnings-down/ 2013/01/31/f44fa6f8-6b81-11e2-9a0b-db931670f35d_story.html. SoftBank's third quarter 2012 earnings report shows that operating income for the first time surpassed ¥600 billion, a 13 percent year-over-year increase and the eighth consecutive record high. *3Q 2012 Earnings Report* at 6.

[40] "SoftBank/Sprint Strategic Partnership," October 15, 2012, at 5, 75, http://webcast. softbank.co.jp/en/press/20121015/pdf/20121015_01.pdf ("*Investor Presentation"*) (based on mobile revenue for the period of January through June 2012).

[41] *3Q 2012 Earnings Report* at 79.

[42] *Investor Presentation* at 65.

[43] *Id.* at 64.

[44] Crest Petition at 36.

Vodafone K.K. acquisition. This debt-to-EBITDA ratio is comparable to that of Verizon Wireless (1.4x) and AT&T (2.0x).[45] In any event, the Commission's well-established policy in making public interest determinations is that it "need not become enmeshed" in evaluating the amount of debt financing that is appropriate in the context of a corporate acquisition.[46] In sum, Crest's concerns regarding the level of debt incurred to finance the Transactions are without merit.[47]

C. Build-Out Requirements Are Unnecessary.

CWA erroneously contends in its Petition that stringent build-out requirements must be imposed to ensure that SoftBank's investment leads to expanded and accelerated deployment of next generation broadband wireless services.[48] CWA is wrong both with respect to the precedent and the need for such a requirement in this instance. There is no Commission precedent to support the imposition of build-out requirements in these Transactions. As the list of

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[45] *Investor Presentation* at 67-68. EBITDA is defined as operating income plus depreciation and amortization (including amortization of goodwill) and is an approximate measure of a company's operating cash flow. Net debt is interest bearing debt minus cash.

[46] *See Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corporation,* Memorandum Opinion and Order, 4 FCC Rcd 6858, ¶ 26 (Comm. Carr. Bur. and Mass Media Bur. 1989) (*"MMM Holdings"*), *aff'd on review,* 4 FCC Rcd 8293 (1989), *citing Tender Offers and Proxy Contests,* Policy Statement, 59 R.R.2d 1536, 1568 n.144 (1986) (*"Tender Offer Policy Statement"*). *See also Applications of Shareholders of CBS, Inc. (Transferor) and Westinghouse Electric Corporation (Transferee),* Memorandum Opinion and Order, 11 FCC Rcd 3733, ¶ 26 (1995) ("[W]e emphasize that the Commission generally refrains from interfering with a company's capital structure or from questioning a lending institution's determination that the merged entity will be financially able to repay the loans.").

[47] Crest also insinuates that the stock market shares its concerns regarding the additional debt that SoftBank will incur, noting that SoftBank's share price dropped 20 percent following announcement of the SoftBank/Sprint Transaction. Crest Petition at 36. Crest ignores that SoftBank's stock in fact has increased nearly 50 percent since then. *See* Dow Jones Newswires, *SoftBank Says Sprint Deal to Weigh on Earnings,* Jan. 31, 2013, http://www.foxbusiness.com/technology/2013/01/31/softbank-says-sprint-deal-to-weigh-on-earnings/.

[48] Petition to Deny or Impose Conditions of Communications Workers of America at 6-7 (Jan. 28, 2013) ("CWA Petition").

proceedings provided by CWA reflects, build-out requirements typically are imposed either in the context of rulemaking proceedings making new bands of spectrum available for use or reallocating an existing band to new, more valuable uses, or in cases involving transaction-specific harms.[49]

In a spectrum allocation or reallocation rulemaking, where the Commission is making available scarce spectrum resources, it is eminently reasonable for the Commission to establish performance requirements that govern all licensees of the spectrum in question. The sole transfer proceeding identified by CWA, Verizon Wireless/SpectrumCo, reflects the unique circumstances of that transaction. There, Verizon Wireless proffered a voluntary build-out commitment in the face of the concern that Verizon Wireless might warehouse "the only large block of greenfield spectrum immediately available for mobile telephony/broadband services."[50]

Further, where a requested build-out requirement would not rectify an identified transaction-specific harm, the Commission soundly rejects calls for such requirements.[51] Most

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[49] *Id*. at 9-10 (citing *AWS-4 Order.)*

[50] *Verizon Wireless-SpectrumCo Order* ¶¶ 64, 119 (noting that "numerous commenters raised serious concerns regarding Verizon Wireless' ability to use the spectrum it seeks to acquire and its actual need for the spectrum"). The Verizon Wireless-SpectrumCo proceeding is further distinguished by the fact that several petitioners and commenters noted that the transferors, with the exception of Cox, had not deployed service in the years since they acquired their licenses at auction. *Verizon Wireless-SpectrumCo Order* ¶ 41. No such claims of disuse have been (or could be) leveled at Sprint or Clearwire.

[51] *See, e.g., Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589, ¶¶ 76, 79 (2011) (*"AT&T/Qualcomm Order*") (rejecting imposition of accelerated build-out requirements on all of AT&T's 700 MHz spectrum); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantic Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 132 n.442 (2008) ("*Verizon-ALLTEL Order*") (rejecting request to impose build-out timelines on the merged entity's planned network upgrade because they were not designed to remedy transaction-specific harms); *Applications of Voicestream Wireless Corp., Powertel, Inc., and Deutsche Telecom AG, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, 16 FCC

recently, in the *AT&T/Qualcomm Order,* the Rural Telecommunications Group asked the Commission to impose build-out conditions on 700 MHz spectrum that AT&T was acquiring from Qualcomm Incorporated and to apply those requirements to all 700 MHz spectrum held by AT&T. The Commission rejected these requests as "not transaction-specific" and unrelated to potential harms that would result from the transaction.[52]

Contrary to CWA's claims, Sprint has in no way "reneged" or fallen short of its prior commitments, including commitments regarding 800 MHz band reconfiguration or the build-out conditions established in the *Sprint-Nextel Merger Order.*[53] With respect to the latter, Clearwire assumed responsibility for the 2.5 GHz build-out commitments as part of the *Sprint-Clearwire Order*, and fully satisfied those commitments *more than a year ahead of the FCC's deadline.*[54] In addition, in 2011, Clearwire and the EBS licensees that lease spectrum to Clearwire filed

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Rcd 9779, ¶ 95 (2001) ("*Voicestream-Deutsche Telecom Order*") (rejecting requests to impose construction build-out requirements beyond those contained in existing rules).

[52] *AT&T/Qualcomm Order,* ¶¶ 76, 79.

[53] *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005) (*"Sprint-Nextel Merger Order"*).

[54] *Sprint Nextel Corporation and Clearwire Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations,* Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008) ("*Sprint-Clearwire Order*"), *aff'd* Order on Reconsideration, FCC 12-157 (rel. Dec. 19, 2012). *See* Letter from Cathleen A. Massey, Clearwire, to Marlene H. Dortch, FCC Secretary, WT Docket No. 08-94 (May 7, 2010) (notifying FCC of compliance with second build-out condition more than a year ahead of deadline); Letter from Cathleen A. Massey, Clearwire, to Marlene H. Dortch, FCC Secretary, WT Docket No. 08-94 (Aug. 4, 2009) (notifying FCC of compliance with first build-out condition). In their application concerning the 2008 Sprint/Clearwire transaction, Sprint and Clearwire described their business plans for deploying a 2.5 GHz WiMAX network to cover "up to 140 million" people and to accelerate the build-out schedule set forth in the 2005 *Sprint-Nextel Merger Order*. Sprint and Clearwire, Description of the Transaction and Public Interest Statement attached as Exhibit 1 to ULS Application File No. 0003462540, at 20 (June 24, 2008). Clearwire achieved this accelerated build-out by deploying a WiMAX network covering well over 100 million people by the end of 2010. *See* Clearwire Corp., Annual Report (Form 10-K), at 2, 23 (Feb. 22, 2011), http://corporate.clearwire.com/secfiling.cfm?filingID=950123-11-16614&CIK=1442505.

showings demonstrating substantial service and satisfying the construction requirements that apply in the 2.5 GHz band.[55] As for the 800 MHz band reconfiguration, Sprint has complied with all of its obligations and taken all the steps within its control to complete 800 MHz rebanding as expeditiously as possible. Sprint has strong incentives to complete this process as soon as possible, both to minimize the risk of interference among 800 MHz commercial and public safety communications systems, and to maximize the use of its reconfigured 800 MHz spectrum for broadband service. Sprint has to date spent more than $3.1 billion in support of 800 MHz reconfiguration and, in combination with public safety and other incumbents, has achieved substantial progress toward completing the Commission's band reconfiguration plan.[56]

SoftBank's build-out history in Japan also refutes CWA's concerns. SoftBank recently was awarded 900 MHz spectrum in Japan, the "Platinum Band."[57] SoftBank submitted

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[55] *See* Public Notice, *Guidance to Broadband Radio Service and Educational Broadband Service Licensees on Complying with Requirement to Demonstrate Substantial Service by May 1, 2011*, 26 FCC Rcd 2152 (*"BRS/EBS Substantial Service Public Notice"*).

[56] Sprint, Petition for Declaratory Ruling, WT Docket No. 02-55 (Jan. 22, 2013) (describing Sprint expenditures on 800 MHz rebanding and reporting that over 99 percent of all non-border U.S. and U.S.-Canada border area public safety incumbents have executed Frequency Reconfiguration Agreements and over 80 percent of such incumbents are operating on new channel assignments in the reconfigured 800 MHz band); Letter from Lawrence R. Krevor, Sprint, to David Furth, FCC, WT Docket No. 02-55 (Feb. 1, 2013) (status report describing substantial progress toward completing 800 MHz reconfiguration).

CWA also cites two news articles about purported gaps in Sprint's LTE network in some markets and Sprint's use of roaming to serve customers in certain portions of Kansas and Oklahoma. CWA Petition at 7 nn. 24-25. These articles concern isolated events that in no way undermine the public interest benefits of the Transactions. Relying on roaming is a routine practice in the wireless industry, and it also is common for customers to experience some coverage gaps during the initial stages of a carrier's rollout of a new technology. Sprint provides customers specific, transparent information regarding its network coverage through its website. In any event, CWA'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.

[57] Press Release, SoftBank Mobile, *Allocation of 900 MHz "Platinum Band"* (Mar. 1, 2012), http://www.softbankmobile.co.jp/en/news/press/2012/20120301_01.

deployment plans that called for an initial deployment of approximately 16,000 new Platinum Band base stations by March 2013. It completed that deployment two months ahead of schedule, in January 2013.[58] The success of SoftBank's entry into the U.S. market is similarly based on the rapid deployment of next-generation wireless broadband networks in this country and, based on the past performance of Sprint and SoftBank, there is every reason to expect that this will occur.

CWA also proposes that the Commission impose new build-out requirements on spectrum where the current licensee already has complied with the Commission's existing build-out rules. As described above, BRS and EBS licensees are subject to "substantial service" obligations under the Commission's rules.[59] Clearwire has complied with those obligations and made the required filings with the Commission when they were due.[60]

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[58] *3Q 2012 Earnings Report* at 56-57.

[59] 47 C.F.R. 27.14(o). The original deadline of May 1, 2011 was extended six months for EBS licensees to Nov. 1, 2011. *National EBS Association and Catholic Television Network Request for Extension of Time to Demonstrate Substantial Service,* Memorandum Opinion and Order, 26 FCC Rcd 4021 (2011) (*"EBS Extension Order"*)

[60] *See, e.g.,* Application for Renewal of Authorization for Station Call Sign WMX692, Attachment (substantial service showing), File No. 0004662570 (filed Mar. 18, 2011). There also is no need for the Commission to impose any additional build-out requirements on Sprint's G Block spectrum, as CWA proposed. The G Block already is subject to FCC construction requirements. 47 C.F.R. § 24.203(d). Sprint received rights to the G Block in return for relinquishing valuable 800 MHz spectrum rights and agreeing to fund the Commission's 800 MHz reconfiguration plan. *Improving Public Safety Communications in the 800 MHz Band,* Report and Order, 19 FCC Rcd 14969, ¶ 5 (2004). Sprint spent $595 million to relocate incumbents from the G Block, an arduous, multi-year effort that involved transitioning the entire Broadcast Auxiliary Service to a new band plan. Sprint consequently has every incentive to put this spectrum to good use, and, in fact, is doing so by aggressively deploying LTE technology in the G Block.

III. No Party Raises Any Legitimate Foreign Ownership or National Security Concerns.

In their petitions, CWA and the Consortium make different, but equally incorrect claims concerning the impact of foreign ownership and national security considerations on the Commission's review of the Transactions. These claims should be rejected.

A. The Applicants Have Met All Applicable Requirements for Obtaining All Necessary Authority Under Section 310(b)(4) of the Communications Act.

CWA and the Consortium make arguments concerning the impact of the proposed foreign ownership of Sprint. CWA argues that the request for a Section 310(b)(4) ruling "sets a high bar" for a determination that the Transactions are in the public interest, while the Consortium claims that foreign control of EBS licenses is "unacceptable" and "unthinkable."[61] Both arguments are wrong.

Contrary to CWA's suggestion, the Commission's rules and policies implementing Section 310(b)(4) establish a presumption that entry into the U.S. market by companies from World Trade Organization ("WTO") member countries is in the public interest.[62] Under that controlling precedent, an applicant is entitled to the presumption that indirect foreign ownership in excess of 25 percent of a common carrier licensee is permissible so long as no more than 25 percent of the applicant's ownership is from non-WTO member countries.[63] As described in the

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[61] CWA Petition at 2; Petition to Deny of the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania, at 2, 5 (Jan. 28, 2013) ("Consortium Petition").

[62] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶¶ 9, 50, 111 (1997) ("*Foreign Participation Order*"). The Applicants clearly established in the Petition for Declaratory Ruling that SoftBank's "home market" is Japan, a WTO member country. Public Interest Statement, Attachment 5 at 9-10 ("Petition for Declaratory Ruling").

[63] *Foreign Participation Order,* ¶¶ 9, 50, 111. The presumption is applied except in specified "exceptional circumstances," such as when the foreign carrier possesses market power in the foreign country. *Id.,* ¶¶ 11, 51. However, and as described in the Petition for Declaratory Ruling, SoftBank does not possess market power in any foreign country, and no other special circumstance applies here. Petition for Declaratory Ruling at 16 n.33.

Applicants' Petition for Declaratory Ruling, based on shareholder surveys and sampling procedures that track the Commission's requirements for determining the origin of ownership, SoftBank's non-WTO member ownership is less than 8 percent, well below this threshold, and Sprint's non-WTO ownership is even less than SoftBank's, at approximately 2.7 percent. As a consequence, the non-WTO member foreign ownership in Sprint after the merger will remain well below 25 percent.[64] No party challenged any element of this analysis.[65]

Once an applicant demonstrates that its non-WTO ownership is below the 25 percent threshold, the Commission presumes that the indirect foreign ownership is in the public interest and an applicant need not make any additional showing of public interest benefits to obtain approval of its proposed foreign ownership.[66] In this context, there is no "high bar" for demonstrating that a proposed transaction is in the public interest when a non-U.S. entity obtains control of a common carrier licensee.

Instead, once an applicant meets the requirements of the *Foreign Participation Order,* there is a presumption that indirect foreign ownership of the licensee is in the public interest and, as recent cases confirm, the Commission applies its usual standards to review other elements of the transaction.[67] For instance, in the Verizon Wireless acquisition of spectrum from several cable operators, and the T-Mobile USA, Inc. ("T-Mobile") acquisition of spectrum from Verizon Wireless, the Commission approved the foreign ownership of the licensees and determined that

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[64] Petition for Declaratory Ruling at 5-6 (current Sprint non-WTO ownership), 10-12 (SoftBank non-WTO ownership).

[65] The Applicants note that they are in the process of responding to a Commission request for additional information concerning the showing in the Petition for Declaratory Ruling. *See* Letter from James L. Ball, Chief, Policy Division, International Bureau, FCC, to John R. Feore and Regina M. Keeney, IB Docket No. 12-343 (Jan. 24, 2013).

[66] *Foreign Participation Order,* ¶¶ 50, 111.

[67] *Id*.

the transactions were in the public interest. In each case, the Commission applied its standard public interest analysis, just as it has consistently done since the *Foreign Participation Order*.[68]

Moreover, and contrary to the Consortium's claim, Section 310(b) imposes no limitation at all on foreign control of the spectrum used by Clearwire.[69] That spectrum is operated on a non-common carriage basis as is permitted under the Commission's rules, so Section 310(b) does not apply.[70] The Commission routinely grants non-common carrier authorizations to non-U.S. entities, such as Intelsat and Inmarsat.[71]

The Consortium's arguments amount to a claim that the public interest would not be served by permitting a foreign entity to control Clearwire's spectrum.[72] At a basic level, Congress settled that question by deciding not to limit foreign companies' ownership of non-common carrier radio licensees. In this particular case, however, the Consortium cannot point to any specific, cognizable harm to the public interest that would be caused by having SoftBank or any other foreign entity control the Clearwire spectrum. There is no evidence that a foreign entity would have less incentive to fulfill the requirements of the EBS rules than a U.S. entity. In fact, any owner of Clearwire will be constrained to comply with the EBS rules under the terms of

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[68] *Verizon Wireless-SpectrumCo Order,* ¶ 28 (describing public interest standard to be applied to all applications addressed by the order, including Verizon Wireless and T-Mobile applications).

[69] Consortium Petition at 2. The Applicants note that, as described below, the Sprint/Clearwire Transaction would have no effect on the licensees of the EBS spectrum leased by Clearwire. *See infra* Section VII(B).

[70] 47 U.S.C. § 310(b) (applying foreign ownership limitations to broadcast, common carrier, aeronautical en route and aeronautical fixed licenses).

[71] *See, e.g.,* Public Notice, *Policy Branch Information – Actions Taken*, 25 FCC Rcd 7425 (2010) (granting authority to operate Ku-band frequencies for non-common carrier space station under file number SAT-A/O-20091208-00141), Public Notice, *Policy Branch Information – Actions Taken*, 24 FCC Rcd 11822 (2009) (granting Inmarsat license for private carriage mobile satellite service under file number SAT-APL-20090609-00068).

[72] Consortium Petition at 3-4, 14.

Clearwire's spectrum leases with EBS licensees.[73] There also is no record evidence and no reason to believe that SoftBank, as a foreign company, will be a less careful steward of the spectrum it controls than Clearwire. Rather, as shown in the Public Interest Statement and above, SoftBank's enormous investment in Sprint gives it every incentive – and the ability – to build out and deploy new and innovative services to benefit the public. In that regard, SoftBank's incentives will be just the same as any other company that makes such a large financial commitment, and those incentives will drive the company toward expanding and improving the services it offers to the public.

B. Any National Security Issues Should Be Addressed in the Team Telecom and CFIUS Processes.

In its petition, CWA professes concern that the Transactions could pose security threats because of the potential for increased use of Huawei and ZTE equipment in the United States.[74]

There is, however, a well-established regulatory process for addressing any national security concerns. The Transactions are subject to review by both Team Telecom and CFIUS. Sprint and SoftBank already are working with both interagency groups, and are cooperating fully in responding to their questions. Team Telecom and CFIUS are both composed of representatives from several agencies with security expertise and, as the Commission knows, they will not permit a transaction to go forward until they are satisfied that it does not pose a threat.[75] The Applicants fully expect to reach an agreement with Team Telecom to address any

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[73] *See infra* Section VII(B). Under the proposed Transactions, Clearwire would become a wholly-owned subsidiary of Sprint and thus indirectly controlled by SoftBank through Sprint. Nothing in the Transactions, or the resultant corporate governance structure, changes the EBS regulatory compliance requirements of the existing leases between Clearwire and EBS licensees.

[74] CWA Petition at 11-14.

[75] Indeed, Team Telecom already has informed the Commission that it is reviewing the Transactions and, as is typical, requested that the Commission not act until that review is complete. *See* Letter from Jennifer Rockoff, Attorney Advisor, National Security Division, U.S.

potential national security concerns associated with the Transactions. Indeed, the Applicants already have agreed that the Commission can condition grant of the Applications on entry into a network security agreement negotiated with Team Telecom.[76]

Given that the expert agencies are conducting their review, there is no need for additional Commission involvement or investigation into national security questions. There also is no need for additional "national security" conditions, because the Commission's authorization for the Transactions will be conditioned on compliance with any conditions imposed through an agreement with the Team Telecom agencies, just as most other transactions involving foreign ownership have been for many years.[77]

In addition, CWA's claims concerning the use of Huawei equipment in SoftBank's network in Japan incorrectly imply that SoftBank uses that equipment in ways that could create risk to network security. SoftBank's telecommunications companies (SoftBank Mobile, SOFTBANK BB Corp. and SOFTBANK TELECOM Corp.) do not use Huawei equipment in their core network infrastructure, but only in the network of an affiliate, Wireless City Planning,

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Department of Justice, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (Jan. 28, 2013).

[76] Public Interest Statement at 32.

[77] *See, e.g., Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, First Report and Order, 27 FCC Rcd 9832, ¶ 20 n.48 (2012); *TerreStar Networks Inc.; Petition for Declaratory Ruling Under Section 310(b) (4) of the Communications Act of 1934, as Amended*, Order and Declaratory Ruling, 24 FCC Rcd 14664, ¶ 3 & Appendix B (2009); *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc. for Consent to Transfer Control of Licenses and Authorizations; Applications of Guam Cellular and Paging, Inc. and Guam Wireless Telephone Company, L.L.C. for Consent to Assignment of Licenses and Authorizations; and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580, ¶ 75 & Appendix (2006).

Inc. ("Wireless City Planning").[78] Even in the Wireless City Planning network, Huawei equipment is used only at the edge of the network, not for core switching and routing functions. Wireless City Planning purchases only radio equipment, which has little or no intelligence, from Huawei and has no current plans to purchase any core equipment. In other words, even in Japan, there is no Huawei or ZTE equipment in Wireless City Planning's network that would pose any security risks.

IV. The Transactions Do Not Raise Any Concerns Regarding Spectrum Aggregation.

A. The Commission Already Approved the Aggregation of the Sprint/Clearwire Spectrum Holdings.

The Transactions raise no concerns regarding spectrum aggregation. As the Applications make clear, the SoftBank/Sprint Transaction will not increase the concentration of spectrum holdings, since SoftBank holds no attributable interest in U.S. spectrum licenses or leases.[79] The Sprint/Clearwire Transaction also will not increase spectrum concentration, given that the Commission attributes Clearwire's spectrum holdings to Sprint as a consequence of the 2008 Sprint/Clearwire transaction. The Commission consistently has attributed Clearwire's spectrum to Sprint since that decision. Sprint and Clearwire provided the relevant data concerning their spectrum holdings in seeking approval of that transaction. The Commission reviewed that data

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[78] *See* Declaration of Tadashi Iida, attached hereto as Exhibit 1. SoftBank does purchase some consumer equipment from Huawei, including its popular wireless picture frame, but there is no indication that such equipment poses any threat. In addition, Huawei and ZTE consumer equipment currently is available from multiple U.S. vendors, including AT&T, T-Mobile, Sprint, MetroPCS, US Cellular, Cricket and Walmart, through its Straight Talk resale service. *See, e.g.,* Huawei Ascend m860 phone available from Cricket, http://www.mycricket.com/cell-phones/details/huawei-ascend-m860 (Huawei Ascend m860 phone available from Cricket) (visited Feb. 8, 2013); ZTE Chorus phone available from Cricket, http://www.mycricket.com/cell-phones/details/zte-chorus-d930 (ZTE Chorus phone available from Cricket) (visited Feb. 8, 2013); Huawei Ascend Y phone available from Walmart, http://www.walmart.com/ip/Straight-Talk-Huawei-Ascend-Y-Cell-Phone/21997708 (Huawei Ascend Y phone available from Wal-Mart) (visited Feb. 10, 2013).

[79] Public Interest Statement at 29.

and the complete record developed in that proceeding, and concluded that the aggregation of Sprint's and Clearwire's spectrum holdings served the public interest.[80] The Commission recently reaffirmed its 2008 decision, further demonstrating that the determinations it made in that transaction remain valid.[81]

Crest argues in its Petition that the Applicants cannot rely on the 2008 *Sprint-Clearwire Order*, and suggests that the Commission must reexamine Sprint's interest in Clearwire's spectrum.[82] Such a reexamination would be pointless and contrary to Commission policy. Sprint has held an attributable interest in Clearwire continuously since the Commission approved the aggregation of the Sprint/Clearwire spectrum holdings in 2008.[83] That approval remains fully in effect. The Commission does not reassess its approval of attributable spectrum holdings arising from a license transfer once its approval becomes final.

This basic principle holds true even for approvals issued by the Commission years earlier, and even when an attributable interest holder subsequently increases its ownership interest in the licensee, as demonstrated by a series of orders involving Cingular Wireless Corp. ("Cingular"). In 2000, the Commission reviewed and approved the merger of SBC Communications, Inc.'s

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[80] *Sprint-Clearwire Order*, ¶¶ 3, 124, 127. The Commission also has reviewed and approved Clearwire's acquisition of additional spectrum holdings following the 2008 order. In doing so, the Commission has taken Sprint's attributable interest in Clearwire into account. *See Applications of Wireless Telecommunications, Inc.,* Memorandum Opinion and Order, 24 FCC Rcd 3177, ¶¶ 21-24 (2009) (applying spectrum screen to Sprint in reviewing and approving Clearwire's acquisition of four BRS licenses).

[81] *Sprint Nextel Corporation and Clearwire Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations,* Order on Reconsideration, WT Docket No. 08-94 (Terminated) and ULS File Nos. 0003462540, *et al*., FCC 12-157 (rel. Dec. 19, 2012) ("*Sprint-Clearwire Reconsideration Order*").

[82] Crest Petition at 25.

[83] *Fifteenth Mobile Competition Report,* ¶ 68 ("In recent transactions, the Commission's concentration and spectrum analysis has attributed Clearwire to Sprint Nextel because Sprint Nextel owns more than a 10 percent equity interest in Clearwire.").

("SBC") and BellSouth Corp.'s ("BellSouth") wireless businesses (including PCS and cellular licenses) into their "Cingular" joint venture, finding that the aggregation of the applicants' spectrum holdings served the public interest.[84] For the next six years, Cingular operated as a separate company with independent management.[85] In 2006, SBC (by then called AT&T) filed an application seeking to acquire BellSouth, including acquiring BellSouth's interest in Cingular in order to obtain affirmative and *de facto* control of Cingular's spectrum holdings.[86] The Commission conducted a thorough review of the proposed transaction as a whole, but did *not* assess AT&T's aggregation of Cingular's spectrum, reasoning that "any spectrum held by Cingular would not affect [the Commission's competition] analysis because Cingular is jointly owned by the applicants."[87] AT&T's acquisition of a 100 percent interest in Cingular's spectrum

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[84] *Applications of SBC Communications Inc. and BellSouth Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 25459 (2000). The Commission subsequently approved Cingular's acquisition of AT&T Wireless. *Application of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004) ("*AT&T-Cingular Order*").

[85] Although SBC and BellSouth each held a 50 percent voting interest in Cingular and thus each had negative control, *de facto* control rested with Cingular's management. *See* AT&T and BellSouth, Description of Transaction, Public Interest Showing and Related Demonstration, WC Docket No. 06-74, at ii, 127 (Mar. 31, 2006) ("*AT&T-BellSouth Merger Application*") ("AT&T's and BellSouth's wireless operations already are jointly owned through Cingular, which is operated as a separate company with separate management. . . . AT&T holds roughly 60 percent of the equity of Cingular Wireless LLC while BellSouth holds roughly 40 percent. AT&T and BellSouth own equal shares of and have equal voting rights in Cingular Wireless Corporation, which manages and exercises *de facto* control of Cingular Wireless LLC. Therefore, both AT&T and BellSouth are deemed to have negative control of Cingular.").

[86] *AT&T Inc. and BellSouth Corporation; Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 14 (2007) ("*AT&T-BellSouth Order*").

[87] *Id.,* ¶ 177 n.474.

was a non-issue because the FCC already had approved AT&T's attributable interest in Cingular years before.[88]

The *Sprint-Clearwire Order* similarly obviates any need to reassess the aggregation of the Sprint/Clearwire spectrum holdings. To do otherwise would waste Commission resources. Moreover, licensees need to be able to rely with certainty on prior Commission approval of their spectrum holdings to develop business plans, invest in wireless services, and adapt to marketplace dynamics.

Crest and Taran make vague arguments in their petitions about regulatory or industry changes since 2008 and claim that the Commission should reassess the *Sprint-Clearwire Order*.[89] These parties, however, fail to explain how any of these developments warrant revisiting the conclusion in the 2008 order that the aggregation of the Sprint/Clearwire spectrum holdings serves the public interest.[90] Crest also questions whether Sprint and Clearwire lived up

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[88] Indeed, the applicants stated that "it is clear that the transfer of BellSouth's interest in Cingular [to AT&T] is a pro forma transaction" because their joint ownership in Cingular had previously been approved. *AT&T-BellSouth Merger Application* at 129.

[89] *See* Crest Petition at 25; Taran Petition at 2.

[90] Even assuming it would be appropriate for the Commission to reassess the Sprint/Clearwire spectrum holdings based on recent developments, those developments would only reinforce the Commission's 2008 finding that the aggregation of the Sprint/Clearwire spectrum holdings does not raise any competition issues. In 2008, Clearwire was the first nationwide provider of 4G services with its WiMAX network. Since then, the number of mobile broadband providers has grown significantly, with all four national wireless carriers, and a number of regional carriers having deployed or in the process of deploying 4G service. *See* Press Release, AT&T Inc., *AT&T to Invest $14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services* (Nov. 7, 2012), http://www.att.com/gen/press-room?pid=23506&cdvn= news&newsarticleid=35661; Verizon Wireless, "LTE Information Center," http://news.verizonwireless.com/LTE/Overview.html (visited Feb. 8, 2013). *See also* Andrew Martonik, *T-Mobile Investing over $4 Billion in 2013 for LTE Rollout*, ANDROID CENTRAL, Dec. 6, 2012, http://www.androidcentral.com/t-mobile-investing-over-4-billion-2013-lte-rollout; MetroPCS Communications, Inc., "Blazing-fast 4G LTE," http://www.metropcs.com/metro/whymetro/ournetwork.jsp (visited Feb. 5, 2013); Sue Marek, *U.S. Cellular to Deploy LTE in 24 Market by November,* FIERCEWIRELESS, May 6, 2011, http://www.fiercewireless.com/story/us-cellular-deploy-lte-24-markets-november/2011-

to statements they made in their 2008 merger application concerning the deployment of broadband services in the 2.5 GHz band. Crest fails to explain, however, why statements about deployment warrant reexamination of the Commission's 2008 spectrum aggregation finding. In any event, Sprint and Clearwire did live up to their 2008 statements: with Sprint as a major investor and customer, Clearwire has deployed mobile broadband service in the 2.5 GHz band to millions of customers and promoted wireless competition. As the Applicants have demonstrated, the Transactions should only further the deployment of competitive and innovative broadband services on Clearwire's 2.5 GHz spectrum.[91]

B. The Commission Should Reject Verizon Wireless' Proposals to Modify the Commission's Spectrum Screen.

Although it takes no position on the merits of the Transactions, Verizon Wireless argues that the Commission should modify its spectrum screen to increase the amount of 2.5 GHz

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05-06; Scott Webster, *C Spire's 4G LTE Network Begins Deployment,* ANDROIDGUYS.COM, Sept. 10, 2012, http://www.androidguys.com/2012/09/10/c-spire/. Since 2008, the two largest wireless carriers, AT&T and Verizon Wireless, have only increased their market share and their spectrum holdings, particularly in the highly valuable bands below 1 GHz.

[91] Taran and Crest make three additional arguments that warrant brief mention. Taran asserts that the Sprint/Clearwire Transaction will give Sprint control of "the only globally significant band for mobile broadband." Taran Petition at 7. This assertion is plainly wrong as wireless carriers throughout the world are deploying mobile broadband networks in numerous bands (including notable global bands such as AWS-1), not just the 2.5 GHz band; Taran's assertion also ignores that, as described above, the *Sprint-Clearwire Order* already found that Sprint's *de jure* control of Clearwire and attributable interest in Clearwire's spectrum serve the public interest. In addition, Taran vaguely predicts that "[r]oaming will be a problem," *id.,* but fails to provide any coherent argument regarding this claim. The Transactions will not harm roaming in any respect. Crest argues that control of Clearwire's spectrum would permit Sprint to engage in predatory pricing and other anticompetitive behavior. Crest Petition at 23. Crest does not explain how that would be possible in an environment in which Sprint is the third-largest wireless provider and in which it already faces competition from value-oriented competitors like T-Mobile and Leap Wireless International, Inc.

spectrum counted under the screen.[92] These arguments are contrary to repeated and recent Commission analysis of how to treat 2.5 GHz spectrum for purposes of the spectrum screen and would subvert the public interest. Since 2008, when it first incorporated the 2.5 GHz band into its spectrum screen, the Commission consistently has excluded EBS spectrum and counted 55.5 MHz of BRS spectrum as suitable and available for mobile telephony/broadband services under its spectrum screen.[93] The Commission affirmed this approach in its order approving the assignment of SpectrumCo's AWS spectrum to Verizon Wireless,[94] and most recently in approving the assignment of various WCS licenses to AT&T.[95]

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[92] Verizon Wireless Comments. Taran also makes the unsupported assertion that the Commission should "revisit" the amount of 2.5 GHz spectrum counted under the screen. Taran Petition at 9.

[93] *See Sprint-Clearwire Order,* ¶ 70 , *aff'd,* Order on Reconsideration, FCC 12-157 (rel. Dec. 19, 2012); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Order on Reconsideration, FCC 12-155, ¶¶ 8-9 (rel. Dec. 19, 2012); *Verizon Wireless-SpectrumCo Order,* ¶¶ 63, 71 n.177; *AT&T/Qualcomm Order* ¶¶ 39-40 & n.120, 42; *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations,* Order, 26 FCC Rcd 16184, Appendix – Staff Analysis and Findings, ¶¶ 45 nn.136-137 (2011); *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements,* Memorandum Opinion and Order, 24 FCC Rcd 13915, ¶ 44 (2009); *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases,* Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, ¶ 47 (2008) (*"Verizon-RCC Merger Order*").

[94] *Verizon Wireless-SpectrumCo Order,* ¶¶ 59-60, 63.

[95] *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company for Consent to Assign and Transfer Licenses*, WT Docket No. 12-240, Memorandum Opinion and Order, FCC 12-156, ¶ 32 (rel. Dec. 18, 2012) ("*AT&T WCS Order*"). The Commission in this decision rejected AT&T's argument for including the full 2.5 GHz band in its spectrum screen, explaining that there was no compelling evidence to change its approach in that proceeding. *Id*.

In its pending spectrum holdings rulemaking proceeding, the Commission has sought comment on its treatment of the 2.5 GHz band under the spectrum screen,[96] and the record in that proceeding provides strong support for continuing the Commission's current policy.[97] As an initial matter, counting all or virtually all 2.5 GHz spectrum under the spectrum screen would lead to absurd results. Under this approach, Verizon Wireless and AT&T, which hold no 2.5 GHz spectrum, would gain substantial "headroom" under the screen to acquire even more spectrum, particularly in the lower bands they already dominate and that provide them with demonstrated initial and ongoing cost advantages. Because of its interest in Clearwire, Sprint meanwhile would face a much more restrictive new spectrum screen threshold in numerous markets around the United States. The Verizon Wireless proposal would undermine the very purpose of the Commission's use of the spectrum screen as an analytical tool: examining the effect of spectrum auctions and spectrum transactions on maintaining and/or promoting wireless competition.

Moreover, there have been no developments since the Commission's most recent analysis of the 2.5 GHz band that would justify a significant departure from its existing spectrum screen approach. The desirability of this spectrum continues to be compromised by regulatory, propagation, and legacy licensing issues that significantly and substantially complicate its utility

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[96] *Policies Regarding Mobile Spectrum Holdings,* Notice of Proposed Rulemaking, 27 FCC Rcd 11710, ¶ 28 (2012) ("*Spectrum Holdings NPRM*").

[97] The Applicants incorporate by reference the analysis of these issues set forth in Sprint's Reply Comments in the pending rulemaking proceeding. Reply Comments of Sprint Nextel Corp., WT Docket No. 12-269, at 19-28 (Jan. 7, 2013). *See also* Comments of Clearwire, WT Docket No. 12-269, at 5-7 (Nov. 28, 2012); Comments of NTCH, Inc., WT Docket No. 12-269, at 5-6 (Nov. 28, 2012); Comments of the Competitive Carriers Association, WT Docket No. 12-269, at 15 (Nov. 28, 2012); Reply Comments of Clearwire, WT Docket 12-269, at 2-6 (Jan. 7, 2013); Reply Comments of Leap Wireless and Cricket Communications, WT Docket No. 12-269, at 2, 9-10 (Jan. 7, 2013); Reply Comments of Rural Telecommunications Group, WT Docket No. 12-269, at 9-11 (Jan. 7, 2013).

and value. These factors include: the 2.5 GHz band's shorter propagation relative to 700, 800 and 1900 MHz spectrum (resulting in considerably higher network coverage costs); the assignment of 60 percent of the 2.5 GHz band to educational entities, which must serve their educational mission before excess capacity can be leased to commercial carriers; rules that make mobile broadband services secondary to high-power video services in portions of this band; the EBS license scheme that creates a patchwork of small, irregular licenses; and the varying availability of 2.5 GHz channels in major metropolitan areas.[98] Verizon Wireless ignores these pivotal factors and provides no basis for altering the Commission's treatment of 2.5 GHz spectrum in this license transfer proceeding.

In any event, as discussed above, the Commission already has applied its spectrum screen and approved the aggregation of the Sprint/Clearwire spectrum holdings. The Commission need not, and should not, reexamine that 2008 public interest finding here. Even assuming for the sake of argument that the Commission, either in this proceeding or in its pending spectrum holdings rulemaking, modifies the amount of 2.5 GHz spectrum counted under its screen, any such modification should not apply to the already-approved Sprint/Clearwire spectrum holdings. The Commission has made clear that any modifications adopted in the pending rulemaking will have prospective effect only.[99] Moreover, should the Commission modify the spectrum screen in this proceeding (which is neither appropriate nor necessary), any such modification should not retroactively apply to the Commission's public interest findings in the *Sprint-Clearwire Order*

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[98] This is not to say, of course, that 2.5 GHz spectrum is not useful or of value. The 2.5 GHz band offers complementary capacity-centric spectrum in a network with a core of mid- and/or low-band spectrum. Clearwire's 2.5 GHz licenses and leases would fulfill that purpose as part of the Sprint Network Vision platform of 800 MHz and 1.9 GHz spectrum holdings.

[99] The Commission stated in the pending rulemaking proceeding that it does "not anticipate revisiting licensees' current spectrum holdings under any revised policy, but instead we would anticipate grandfathering those holdings." *Spectrum Holdings NPRM,* ¶ 49.

which, as explained above, remain fully in effect. The Verizon Wireless arguments about proposed new spectrum screen policies are consequently irrelevant to the instant proceeding.

V. The Crest and Taran Petitions Are Meritless and Assert Claims Outside the Commission's Jurisdiction.

Crest and Taran, two minority shareholders of Clearwire, have petitioned the Commission to deny the Transactions or impose draconian conditions. Both have mounted a concerted campaign to extract a higher price for their Clearwire shares by making inaccurate and unsupported claims in the press and in shareholder litigation filed in Delaware state court.[100] Their petitions are part of this campaign. By asking the Commission to intervene in their private shareholder dispute, Crest and Taran hope to gain leverage to enrich their investors. The Commission should reject this abuse of its processes.

The Crest and Taran petitions are built on misstatements of the facts and unsupported leaps of logic. Crest and, to a lesser extent, Taran claim that SoftBank and Sprint somehow coerced Clearwire into a transaction that allegedly undervalued Clearwire and its spectrum and prevented Clearwire from pursuing alternative transactions. These assertions are not consistent with the facts:

- As *The New York Times* reported, the share price Sprint negotiated in an arm's length transaction with Clearwire "represents a premium of 128 percent over Clearwire's stock price in early October, before speculation emerged that Sprint would seek to buy the wireless network operator."[101]

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[100] *Crest Financial Ltd. v. Sprint Nextel Corp., et al.*, C.A. No. 8099-CS (Del. Ch.); Scott Moritz and Alex Sherman, *Clearwire Investor Taran Adds Pressure on Sprint to Raise Bid*, THE SEATTLE TIMES, Jan. 17, 2013, http://seattletimes.com/html/businesstechnology/2020157440_cleawiretaranxml.html.

[101] Michael J. De La Merced, *Sprint Nextel Reaches a Deal to Buy Rest of Clearwire*, THE NEW YORK TIMES, Dec. 17, 2012, http://dealbook.nytimes.com/2012/12/17/sprint-reaches-deal-to-buy-out-clearwire/. *See also Clearwire Proxy Statement* at 11. Under the proposed transaction, Sprint will acquire the approximately 50 percent stake in Clearwire it does not currently own for $2.97 per share, equating to a total payment to Clearwire shareholders, other

- Clearwire, after "reviewing available strategic alternatives over the course of the last two years," determined that the Sprint/Clearwire Transaction "is the best path forward" and "delivers certain and attractive value for our shareholders."[102] Clearwire operates as a separate company with independent management, and its decision "was unanimously approved by Clearwire's board of directors upon the unanimous recommendation of a special committee of the Clearwire board consisting of disinterested directors not appointed by Sprint."[103]
- The Sprint/Clearwire Transaction reflects the marketplace price of Clearwire's spectrum, unlike Crest's estimates, which rely on speculation and transactions involving very different spectrum holdings in other bands.[104]
- Contrary to the claims of Crest and Taran, Sprint, as Clearwire's largest investor and customer, has had every incentive to promote Clearwire's success and has invested enormous resources into its partnership with Clearwire over the years so that Clearwire can maximize the use of its spectrum for mobile broadband service.[105]

In a recent Securities and Exchange Commission filing, Clearwire details why the Sprint/Clearwire Transaction is the best path forward for Clearwire, and also explains the care

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than Sprint, of $2.2 billion. This transaction results in a total Clearwire enterprise value of approximately $10 billion, including net debt and spectrum lease obligations of $5.5 billion.

[102] Press Release, Clearwire, *Sprint to Acquire 100 Percent Ownership of Clearwire for $2.97 per Share* (Dec. 17, 2012), http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=727143 ("Clearwire Dec. 17 Press Release"). *See also Clearwire Proxy Statement* at i, 1, 22, 35.

[103] Clearwire Dec. 17 Press Release at 1.

[104] Crest points to valuations of spectrum in other bands, but spectrum prices vary greatly depending on the spectrum band in question and other factors. For example, in a 2007 transaction, AT&T received $0.17 per MHz-Pop in return for the assignment of 2.5 GHz holdings to Clearwire. Opposition to Petitions to Deny and Reply to Comments of Intel Corp., WT Docket No. 08-94, at 4 (Aug. 4, 2008). In contrast, AT&T paid more than eighteen times as much ($3.15 per MHz-Pop) for Lower 700 MHz B Block licenses at auction in 2008. *See Verizon Nearly Lost Bid for National C-Block License*, COMMUNICATIONS DAILY (Mar. 25, 2008). *See also Clearwire Proxy Statement* at 29-30 (describing unsuccessful efforts by Clearwire to explore spectrum sale transactions with other parties).

[105] *See, e.g., Clearwire 2011 Annual Report* at 2 (describing Sprint's agreement to pay Clearwire $925.9 million to resell Clearwire's WiMAX service in 2012 and 2013 and a 2011 agreement by Sprint to purchase $331.4 million of additional shares in Clearwire); *id.* at 6 (describing Clearwire's business strategy of leveraging its partnership with Sprint and stating that "[w]e should continue to benefit from our partnership with Sprint").

Clearwire took in ensuring that the transaction is fair to minority shareholders.[106] Clearwire's filing refutes the core allegations underlying the Crest and Taran petitions.

More fundamentally, however, the issues raised by Crest and Taran are irrelevant to the Commission's review of the Transactions under the Communications Act. The Crest and Taran Petitions ask the Commission to second-guess the Sprint/Clearwire Transaction and conduct a comparative analysis of alternative transactions (*e.g.,* Clearwire pursuing other business proposals or remaining an independent company and selling some of its spectrum rights).[107] Section 310(d) of the Communications Act, however, expressly prohibits such a comparative analysis:

> [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.[108]

As the Commission has stated, under section 310(d) the Commission may "not indulge in comparative analyses between the transferee and others, including the existing licensee."[109] This statutory prohibition "avoid[s] 'an unwise invasion by a governmental agency into private business practice . . . and undue delay in passing upon transfers of licenses.'"[110]

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[106] *See Clearwire Proxy Statement* at 21-31.

[107] *See, e.g.,* Crest Petition at 3, 13-14, 38-41 (asserting that Clearwire should remain independent, pursue a stock offering or alternative business transaction, and/or sell some of its spectrum holdings); Taran Petition at 9-10 (making vague claims about the DISH proposal and suggesting that Clearwire remain independent).

[108] 47 U.S.C. § 310(d).

[109] *MMM Holdings*, ¶ 8 (1989).

[110] *Id.* (quoting S. Rep. No. 82-44, at 8 (1st Sess. 1951)). *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"); *KETX(AM),*

The Crest and Taran Petitions also are contrary to the Commission's well-established policy of not intervening in disputes over corporate control. The arguments in the Crest and Taran Petitions boil down to the same fiduciary duty and corporate law claims made in Crest's shareholder litigation.[111] Not only are these claims inaccurate, but the Commission repeatedly has held that it will leave the resolution of such matters to more appropriate forums. The Commission has made clear that it "is not in the public interest for our administrative processes to be utilized, either by design or by unintended result, in a manner which favors either the incumbent or the challenger in disputes over corporate control."[112] The Commission also has dismissed similar minority shareholder claims in other license transfer proceedings as beyond its jurisdiction. "Whether or not the transaction violated the rights of shareholders is a question of state law and private contract, matters which the Commission has historically and consistently

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Letter Ruling, 23 FCC Rcd 12687 (MB 2008) (rejecting claim that the Commission should consider whether a competing offer exceeded the transferee's offer to acquire the licensee).

[111] *See* Crest Petition at 13 (asserting meritless claim that Sprint "used its control of Clearwire" to prevent Clearwire from pursuing other business arrangements, even though Clearwire board unanimously approved the Sprint/Clearwire Transaction upon the unanimous recommendation of the special committee of disinterested Clearwire directors not appointed by Sprint); *id.* at 14 (disagreeing with Sprint's business decision to oppose the DISH business proposal); *id.* at 27-30 (making fiduciary duty claims, false allegations regarding a note purchase agreement, and claims raised in state court litigation); *id.* at 31-35 (making unsupported allegations about a "scheme" by SoftBank and Sprint to "depress Clearwire's share price," and ignoring that the SoftBank/Sprint Transaction is *not* contingent on the closing of the Sprint/Clearwire Transaction); *id.* at 38 (making vague assertions about "Sprint's illegal maneuvering and control tactics"); Taran Petition at 5, 9 (conceding that "there will be no competitive harm from consolidation of Clearwire's 1.4 mm retail customers with Sprint," but making unsupported allegation concerning "Sprint's willful attempts to disadvantage minority shareholders").

[112] *Tender Offer Policy Statement,* ¶ 6 (1986). *See also 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).

left to local courts of appropriate jurisdiction. These allegations fail to demonstrate that grant of the applications would be *prima facie* inconsistent with the public interest."[113]

Crest and Taran attempt to dress up their shareholder dispute claims in "public interest" rhetoric. For example, Crest wrongly claims that Sprint prevented a Clearwire stock offering that was to be used to fund Clearwire's LTE deployment;[114] it makes the misguided argument that the Sprint/Clearwire Transaction will discourage TV broadcasters from participating in the

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[113] *Applications of Paxson Management Corp. and CIG Media LLC,* Memorandum Opinion and Order, 22 FCC Rcd 22224, ¶ 31 (2007). *See also Instapage Network Ltd.'s Informal Request for Retroactive Bidding Credits*, Order on Reconsideration, 19 FCC Rcd 20356, ¶ 9 (WTB 2004) (The Commission "has a long-standing practice of not addressing matters related to private contractual agreements," having often observed that "private disputes are beyond our regulatory jurisdiction and must be resolved in a local court of competent jurisdiction.") (internal quotation marks and citations omitted); *Application for Consent to Assignment of PCS Licenses KNLH651 and KNLH653 from Northstar Technology, LLC to Banana Communications, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 9122, ¶ 16 (WTB 2008) ("The Commission has routinely acted favorably on license assignment applications notwithstanding pending unresolved contractual disputes to which the Commission is not a party.").

[114] Crest claims that Sprint caused Clearwire to "scuttle" the $300 million stock offering "when Sprint and SoftBank began to discuss the SoftBank-Sprint transaction." Crest Petition at 13. Clearwire's decision, however, had nothing to do with Sprint or SoftBank. Rather, the trading price of the offering consistently fell below the floor price established by the Clearwire board, and Clearwire "concluded it was unlikely that the Company would be able to raise sufficient proceeds from the offering to satisfy the Company's objectives." *Clearwire Proxy Statement* at 18.

FCC's 600 MHz incentive auction;[115] and throughout its petition Crest makes the unsupported claim that SoftBank and Sprint will not put Clearwire's spectrum to competitive use.[116]

These arguments cannot hide that Crest and Taran are seeking to manipulate the Commission's processes to gain leverage in their private shareholder dispute.[117] The Commission has held that even when a petitioner characterizes its claims as involving allegedly Commission-related misconduct, the Commission will dismiss those claims when, at bottom, they involve private contractual disputes that are pending (or could be maintained) in a state court.[118] That is the case here. The Commission should reject the effort by Crest and Taran to

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[115] Crest Petition at 18. Crest fails to provide any rational explanation as to how the Sprint/Clearwire Transaction would influence bidding in the incentive auction. Crest does not explain, for example, why broadcaster incentives would be affected by a transaction involving the 2.5 GHz band but not by the very high price per MHz-Pop in a recent Verizon Wireless/ AT&T transaction (cited in the Crest Petition at 18 n.47) involving the 700 MHz band, which is directly adjacent to the broadcaster spectrum. Bidding in an FCC auction is shaped by a wide variety of factors, not solely by the terms negotiated in any individual secondary market transaction. As the Commission has stated, "the auction values realized by the Commission in conducting a particular spectrum auction reflect factors that are specific to the particular spectrum being auctioned." *Fees for Ancillary or Supplementary Use of Digital Television Spectrum,* Memorandum Opinion and Order, 14 FCC Rcd 19931, ¶ 11 (1999).

[116] Far from "hoarding" spectrum, as Crest asserts, Sprint and Clearwire have fully complied with Commission build-out requirements and invested billions of dollars to deploy wireless networks that serve millions of customers. SoftBank has every incentive to develop this spectrum further to increase competition in the mobile broadband marketplace, and has a proven track record in doing so. *See supra* section II(C).

[117] Indeed, Crest's motivations are quite clear in its arguments regarding $800 million in interim financing that Sprint has agreed to provide Clearwire. Crest ignores that this interim financing will benefit consumers by enabling Clearwire's deployment of LTE technology. Rather than recognize these public interest benefits, Crest focuses on allegations about how the financing arrangement will affect Clearwire's minority shareholders, an issue outside the Commission's jurisdiction. Crest Petition at 27-28.

[118] In one recent decision, the Commission found that while petitioners' claims arose from broadcast-related activities, "this fact alone does not bring them within the Commission's jurisdiction." Since "the crux" of the dispute was "whether [the Licensee] breached its fiduciary duty," the Commission found that petitioners' claims were "contractual in nature and therefore involve 'non-FCC' misconduct" falling outside the FCC's jurisdiction. Letter Ruling from Peter

use the Commission's processes to gain leverage in their private shareholder dispute. Their claims are beyond the Commission's jurisdiction and should be dismissed.

VI. The Commission Should Give No Weight to Claims that the Transactions Will Have Negative Effects on Jobs.

The Commission should reject the CWA and Greenlining arguments about job creation.[119] Greenlining urges the Commission to "investigate what, if any, changes may be made to Sprint's employee benefits and any other potential impacts the proposed transaction may have on Sprint's employees," while CWA asserts that the "Softbank [sic] takeover of Sprint will not lead to significant job creation at Sprint" and then argues that Sprint engages in outsourcing that moves jobs overseas.[120]

First, the Applicants did not assert that any job-related public interest benefits would result from this transaction.[121] Thus, even if CWA and Greenlining were correct, their claims would have no impact on the Applicants' public interest showing or the Commission's evaluation of that showing.

Next, Greenlining's comments ask the Commission to "investigate what, if any, changes may be made to Sprint's employee benefits and any other potential impacts the proposed

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H. Doyle, FCC, to Dennis J. Kelly et al., 23 FCC Rcd 4000 (2008), *review denied sub nom. Trinity Int'l Foundation*, Memorandum Opinion and Order, 27 FCC Rcd 11501 (Sept. 10, 2012).

[119] *See* CWA Petition at 14-16; Greenlining Comments at 10.

[120] Greenlining Comments at 10; CWA Petition at 14-16.

[121] Of course, to the extent that Sprint and Clearwire grow as a result of the investment from SoftBank and the resulting improvements in coverage, bandwidth and service quality, there will be positive impacts on all aspects of the business and the economy, including the number of people employed. Nevertheless, the Applicants do not rely on job growth in their public interest showing and have made no projections as to the number of new jobs that could result from the Transactions. *See also* Public Interest Statement at 14 (noting that "greater competition and innovation can in turn stimulate economic growth and promote job creation"), 22 (quoting National Broadband Plan on positive impact of broadband deployment on job creation).

transaction may have on Sprint's employees."[122] Such an investigation, however, would be far outside the scope of the Commission's public interest review and expertise. In any event, Greenlining provides no reason to believe that there would be any changes in the terms of employment at Sprint, let alone any evidence that they will be changed for the worse.

Finally, CWA's claim that Sprint is shipping a significant number of jobs overseas is wrong.[123] The Commission should reject these groundless assertions, which also are wholly unrelated to the Commission's review of the Transactions.[124]

VII. The Commission Should Reject Other Non-Transaction Specific Claims.

When reviewing proposed transfers of control, the Commission properly "focuses on the potential for harms and benefits to the policies and objectives of the Communications Act *that*

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[122] Greenlining Comments at 10.

[123] Sprint has not moved its network management operations offshore. Rather, Sprint entered into an arrangement with Ericsson in 2009 under which Ericsson provides day-to-day network management services. Under this arrangement, approximately 6,000 Sprint employees transitioned into being Ericsson employees. Of these 6,000 employees, the overwhelming majority remained employed by Ericsson in the United States. News Release, *Sprint Gains Network Advantage: Innovative Network Services Deal with Ericsson Delivers Competitive Edge* (July 9, 2009), http://newsroom.sprint.com/article_display.cfm?article_id=1164. Similarly, more than three quarters of all calls to Sprint call centers are handled by Sprint employees or contracted-to call centers in the United States. Moreover, the 2012 American Customer Satisfaction Index reported that Sprint is first among major wireless carriers for customer satisfaction, demonstrating that its arrangements are not harming service to customers. *See* American Customer Satisfaction Index™, *May 2012 and Historical ACSI Scores* (updated May 15, 2012), http://www.theacsi.org/acsi-results/acsi-scores-may. And, of course, critical, well-paid jobs like constructing, upgrading and maintaining Sprint's and Clearwire's network facilities cannot be moved overseas because they have to be performed where Sprint's network is, inside the United States.

[124] CWA's claims concerning the potential for SoftBank and Clearwire to use Huawei and ZTE equipment and that the use of Huawei and ZTE equipment would have some impact on the general decline of manufacturing jobs in the United States also should be rejected. These claims are, at best, speculative, and there is no reason to believe that SoftBank would be any more likely to use Huawei or ZTE equipment than any other provider of wireless services. In addition, as described above, national security concerns are being addressed appropriately by the expert agencies. *See supra* Section III(B).

flow from the proposed transaction."[125] Thus, as the Commission repeatedly has made clear, it will consider only transaction-specific matters in deciding transfer of control proceedings.[126] While the Commission has recognized "the temptation and tendency for parties to use the license transfer review proceeding as a forum" for settling disputes, it has been careful not to permit parties to subvert the merger review process by converting it into a private "forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction. . . ."[127] Nonetheless, numerous parties attempt to use this proceeding as a vehicle for improperly pursuing matters that are unrelated to the Transactions. As discussed more fully below, the Commission should, consistent with its longstanding precedent, reject these extraneous claims without further consideration.

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[125] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547, ¶ 6 (2001) (emphasis supplied) ("*AOL-Time Warner Order*"); *see also Applications for Consent to the Transfer of Control of Licenses From Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, Order, 17 FCC Rcd 22633, ¶ 11 (2002) ("[M]erger review is limited to consideration of merger-specific effects."); *Applications of Chadmoore Wireless Group, Inc. and Various Subsidiaries of Nextel Communications, Inc. for Consent to Assignment of Licenses,* Memorandum Opinion and Order, 16 FCC Rcd 21105, ¶ 18 (WTB 2001); *Applications of Pacific Wireless Techs., Inc. and Nextel of California, Inc. for Consent to Assignment of Licenses,* Memorandum Opinion and Order, 16 FCC Rcd 20341, ¶ 17 (WTB 2001).

[126] *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation,* Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶ 26 (2006) ("Despite its broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are reasonably related to the Commission's responsibilities under the Communications Act and related statutes."); *see also AT&T-WCS Order,* ¶ 39; *Verizon Wireless-SpectrumCo Order,* ¶ 94; *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 25 FCC Rcd 3763, ¶ 23 (WTB 2010); *Sprint-Nextel Merger Order,* ¶ 43.

[127] *AOL-Time Warner Order,* ¶ 6.

A. Pre-Existing Intercarrier Compensation Disputes Should Not Be Considered in Connection with This Transaction.

A number of parties improperly attempt to use the Commission's review of the Transactions as a vehicle for addressing ongoing intercarrier compensation disputes. For example, Line Systems, Inc. ("LSI") complains about a dispute it has with Sprint about the routing of phantom traffic and payment for switched access transport and termination services.[128] Similarly, nWire, LLC, Pac-West Telecomm, Inc., and Tex-Link Communications, Inc. (the "CLEC Petitioners") urge the Commission to require Sprint to pay disputed intercarrier compensation invoices.[129] In addition, the Crow Creek Sioux Tribe Utility Authority ("Crow Creek Sioux") filed a Petition to Deny based on a billing dispute between Sprint and Native American Telecom, LLC ("NAT").[130]

These allegations not only lack merit, but also are not transaction-specific and therefore should not be considered in this proceeding.[131] None of the pre-existing intercarrier compensation disputes has anything whatsoever to do with the transactions before the Commission, and none will be affected by the outcome of this proceeding. For precisely these reasons, the Commission consistently has declined to consider these types of disputes in other

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[128] Line Systems Inc. Petition to Deny at 5-14 (Jan. 28, 2013) ("LSI Petition").

[129] Petition to Deny of CLEC Petitioners at 2 (Jan. 28, 2013) ("CLEC Petitioners Petition").

[130] Petition to Deny of the Crow Creek Sioux Tribe Utility Authority at 6-7 (Jan. 9, 2013) ("Crow Creek Sioux Petition"). NAT is a limited liability company organized and owned by individuals who are not members of the Crow Creek Sioux Tribe.

[131] Sprint has sought to resolve these carriers' disputes, but in many cases they are engaging in practices that are contrary to the Commission's rules or are unable to provide sufficient information to support their bills. Thus, even if the Commission did not have a policy against importing commercial disputes of this nature into transfer of control proceedings, there would be no reason to grant these parties any relief.

transaction proceedings,[132] repeatedly holding that it "will not consider arguments in [license transfer] proceeding[s] that are better addressed in other Commission proceedings, or other legal fora, including the [courts] and the Congress."[133] As the foregoing precedent makes clear, the intercarrier compensation disputes raised by LSI and others are not appropriate subjects for this proceeding. Indeed, several of the intercarrier compensation claims in question already are pending in other forums and/or other Commission proceedings.[134]

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[132] *See, e.g., Applications Filed by Qwest Communications Int'l and CenturyTel, Inc. d/b/a/ CenturyLink for Consent to Transfer Control,* Memorandum Opinion and Order, 26 FCC Rcd 4194, ¶ 18 & n.62 (2011) (finding that "access charge litigation . . . [and] ongoing intercarrier compensation litigation" are issues that are "better addressed in a rulemaking of general applicability or are otherwise not specific to this transaction"); *Applications of WWC Holding Co., Inc. and RCC Minnesota, Inc. for Consent to Assignment of Licenses,* Memorandum Opinion and Order, 22 FCC Rcd 6589, ¶ 16 (WTB 2007) (noting, *inter alia*, that the Commission has "repeatedly held that private disputes and contractual matters should be resolved by a tribunal of competent jurisdiction" and "absent a prior court injunction, [the Commission] would not ordinarily withhold consent to an otherwise acceptable application").

[133] *Applications of Craig O. McCaw and American Tel. & Tel. Co. for Consent to the Transfer of Control,* Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶ 123 (1994), *aff'd sub nom. SBC Communications Inc. v. FCC,* 56 F.3d 1484 (D.C. Cir. 1995); *see also Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement,* Memorandum Opinion and Order, 25 FCC Rcd 8704, ¶ 139 (2010) ("*AT&T-Verizon Order*"); *Glendale Electronics, Inc. Regarding the License of SMR Station WNGQ365, Santiago Peak and Mount Lukens, California,* Order, 17 FCC Rcd 22189, ¶ 10 n.34 (WTB 2002) ("[I]t is longstanding Commission policy not to adjudicate private contractual disputes where forums for those disputes exist in state court."); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from S. New England Telecomm. Corp. to SBC Communications, Inc.,* Memorandum Opinion and Order, 13 FCC Rcd 21292, ¶ 29 (1998) (declining to address objections that were based on a carrier's pre-existing dispute with SBC that already was pending in a separate proceeding) (*"SNET-SBC Order"*).

[134] For example, LSI has filed a claim with the United States District Court and an informal complaint with the FCC. *Line Systems Inc. v. Sprint Nextel Corporation*, No. 2:11-CV-06527-TON (E.D. Pa. filed Oct. 11, 2011); FCC Enforcement Bureau File No. EB-11-MDIC-0007. With respect to the Crow Creek Sioux dispute, Sprint has filed suit against NAT alleging that NAT is involved in a traffic pumping scheme. *Sprint Communications Co., L.P. v. Native American Telecom LLC*, No. 4:10-cv-04110-KES (D.S.D. filed Aug. 16, 2010). The District Court hearing the case has referred certain questions to the FCC for resolution on primary jurisdiction grounds, and these issues are now before the FCC in a proceeding that is unrelated to the Applications. *Sprint v. Native American Telecom*, No. 4:10-cv-04110-KES, Memorandum

Although these intercarrier compensation disputes clearly are not merger-specific, some of the parties seek to shoehorn their disputes into this proceeding through transparently meritless arguments. For example, LSI attempts to tie its dispute to this proceeding by claiming that the Transactions will harm competition by significantly increasing "the volume of Sprint calls sent to LSI, and other carriers, for call termination."[135] Contrary to LSI's claim, however, there is no reason to believe that the Transactions will directly result in a significant increase in traffic on LSI's network.[136] The Crow Creek Sioux takes a different tack, attempting to bootstrap the special status of Indian Tribes to convert its intercarrier compensation claims into merger-specific issues. Despite the Crow Creek Sioux's arguments, however, the "red light" rule applies only if an applicant owes a debt to the Commission.[137] The federal government's "trust relationship with Indian Tribes" does not allow an Indian Tribe to stand in the Commission's shoes for purposes of the "red light" rule.[138] Nor has the Commission required Sprint or other wireless carriers to make spectrum available to Indian Tribes, as the Crow Creek Sioux appear to

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Opinion and Order at 25 (D.S.D. Feb. 22, 2012); *Sprint v. Native American Telecom LLC Primary Jurisdiction Referral*, File No. EB-12-MD-005.

[135] LSI Petition at 11; *see also id.* (claiming that the Transactions will increase the number of customers Sprint serves to 92 million subscribers).

[136] Similarly, although LSI is correct that the combined SoftBank/Sprint would serve approximately 92 million subscribers, over 30 million of those subscribers are customers of SoftBank's subsidiaries located in Japan, who will have no effect on the traffic Sprint exchanges with LSI.

[137] *See* 47 C.F.R. § 1.1910 (stating that the FCC will withhold action on applications by any entity that is "delinquent in its *debt to the Commission*") (emphasis added).

[138] *See, e.g.*, Crow Creek Sioux Petition at 5, quoting *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, FCC 00-207 at 5 (2000). It is not clear that a debt owed to NAT constitutes a debt owed to an Indian Tribe, much less a debt owed to the Commission. Moreover, Sprint's dispute with NAT is still pending, and Sprint has yet to be found to owe NAT any money, much less to be delinquent on any debts to NAT.

believe.[139] Unlike LSI and Crow Creek Sioux, the CLEC Petitioners do not even attempt to connect their conclusory allegations to the Transactions. Instead, they merely assert that the Commission should "impose conditions . . . to address the[ir] concerns" about money Sprint allegedly owes them.[140] The Commission should reject these blatant attempts to use the merger review process as a means of gaining leverage in pre-existing intercarrier compensation disputes.

B. The Consortium's Allegations Regarding Clearwire's EBS Leases Are Without Merit.

In an apparent attempt to use the pendency of these transactions to void their leases with Clearwire, the Consortium raises a variety of baseless claims regarding Clearwire's support of the EBS educational use requirement and its EBS lease agreements. The allegations are groundless and lack any nexus to the proposed transactions.

1. The Consortium's Allegations Are Irrelevant to the Commission's Review of the Transactions.

Despite their rote incantation of claims regarding the alleged concentration of spectrum holdings that would result from the Transactions, the Consortium parties are in a private contract dispute with Clearwire and have seized on the pending proceeding as the opportunity to ask the Commission, in effect, to void all of Clearwire's leases.[141] Recognizing that such a tactic is

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[139] Crow Creek Sioux Petition at 8. While the Crow Creek Sioux cite to the *Tribal Lands NPRM* for support, the NPRM does not impose any obligations on wireless carriers. Instead, the NPRM merely seeks comment on whether the Commission should impose requirements related to spectrum on Tribal Lands, and even the proposals under consideration in the *Tribal Lands NPRM* do not go so far as to require wireless carriers to make spectrum available to Tribes. *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (*"Tribal Lands NPRM"*).

[140] CLEC Petitioners Petition at 2.

[141] Consortium Petition at 16. Clearwire is the lessee of channels (WNC484) from the Consortium and the sublessee of channels (WND524, WND525, WND526, WND527, WND528 and WND589) which are leased by the Erie Diocese to Algonquin Wireless, Inc. and Krisar, Inc. On January 14, 2013, Clearwire received an e-mail from Rudolph Geist, the Consortium's

outside the scope of its review of transactions, the Commission has often stated that it will not allow disgruntled business partners to raise private issues in the context of an application for assignment or transfer.[142] Moreover, the Consortium's allegations regarding EBS programming and lease requirements are wholly unrelated to the Transactions. For these reasons alone, the Commission should dismiss the Consortium's request.

2. Clearwire and Its EBS Lessors Have Complied With All Applicable Commission Obligations.

The Consortium alleges that Clearwire has done "virtually nothing" to comply with what it mischaracterizes as Clearwire's obligations and claims that Clearwire has frustrated EBS licensees' abilities to satisfy their regulatory obligations. These allegations are neither transaction-specific nor accurate. Clearwire is not obligated to ensure that EBS spectrum is appropriately used by EBS entities. Satisfying the educational use requirement is the obligation of, and can only be accomplished by, the EBS licensees themselves.[143] To be sure, as the Commission had hoped, a synergistic relationship has developed between EBS licensees and commercial lessees/operators, and EBS licensees have been able to enhance their educational programs by relying on excess capacity lease payments and network coverage provided by commercial operators. But EBS entities, as the licensees, are still the responsible parties in complying with the Commission's educational programming requirements.

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counsel, initiating a dispute regarding a lease between one of the Consortium parties and Clearwire. Similarly, on January 14, 2013, Algonquin/Krisar's representatives received an e-mail from Mr. Geist, the Erie Diocese's counsel, initiating a dispute regarding the lease between Algonquin/Krisar and the Erie Diocese and challenging the sublease to Clearwire. Clearwire is in the early stages of analyzing the facts behind these private, contractual disputes.

[142] *See, e.g., AT&T-Verizon Order,* ¶ 139 (stating that contractual disputes are "matters in which the Commission ordinarily does not become involved"); *Verizon-ALLTEL Order,* ¶ 214.

[143] 47 CFR § 27.1203(b).

The Consortium Petition is an unfounded broadside to the entire EBS community and denigrates the significant and substantial educational use programs that exist in the band. In fact, a growing variety of programs and services have emerged to meet the changing needs of educators holding 2.5 GHz band licenses. For example, in Los Angeles, schools are using EBS spectrum to transmit multiple digital streams of educational programming for classroom education, staff development and training, and distance learning. Other EBS licensees are incorporating EBS spectrum into larger wide-area commercial fixed wireless or mobile systems while retaining rights to use system capacity needed to serve students, faculty, and staff. Regardless of how they satisfy the Commission's educational use requirements, EBS licensees make these decisions for themselves and the Consortium Petition provides no basis to conclude otherwise.

a) EBS Licensees' Reliance on Clearwire's Coverage to Satisfy Their Build-Out Requirement Comports Fully with the Commission's Rules.

Even if EBS licensees' satisfaction of the educational use requirements were relevant to the consideration of this transaction, those obligations are being satisfied. On or before November 1, 2011, EBS licensees were required to demonstrate that they met the build-out standards for the band.[144] EBS licensees could meet the build-out requirement by, among other safe harbors, meeting an educational use test by providing a detailed description of how EBS spectrum was used for educational purposes or meeting a leasing test by relying on 30 percent or

[144] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, ¶¶ 274-310 (2006) ("*BRS/EBS Second R&O*"). The original deadline of May 1, 2011 was extended six months for EBS licensees to Nov. 1, 2011. *EBS Extension Order*, ¶ 1.

greater coverage provided by a commercial lessee *and* providing a certification of educational use.

The Consortium claims that EBS licensees who relied on the coverage of commercial lessees show no or minimal educational use,[145] but this claim ignores the clear and conspicuous certification required by the Commission that appeared in the substantial service showings for every EBS call sign they cite. The certification plainly states that the EBS licensee met the educational use requirement in their licensed areas.[146] EBS licensees were required to do nothing more.[147]

Tellingly, some members of the Consortium group, such as the Consortium for Public Education, relied upon Clearwire's coverage to make their build-out showings.[148] Similarly, the

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[145] Consortium Petition at 7, Exhibit 1.

[146] Licensees used the following or similar language: "Licensee certifies that it is in compliance with the programming and minimum usage requirements set forth in Sections 27.1203 and 27.1214 of the Commission's rules."

[147] The Commission required more than a certification only when the EBS licensee could not rely on a coverage showing. In its Public Notice providing information on the substantial service requirements, the Commission described the educational use safe harbor as follows: An EBS licensee has provided ''substantial service'' when:

> (i) The EBS licensee is using its spectrum (or spectrum to which the EBS licensee's educational services are shifted) to provide educational services within the EBS licensee's GSA;
>
> (ii) the EBS licensee's license is actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; and
>
> (iii) the level of service provided by the EBS licensee meets or exceeds the minimum usage requirements specified in § 27.1214.

BRS/EBS Substantial Service Public Notice at 2.

[148] *See, e.g.,* Demonstration of Substantial Service for Call Sign WNC484 (licensed to Consortium for Public Education), attached to ULS Application File No. 0004867672, at 1 (filed Sept. 8, 2011; accepted by FCC Sept. 16, 2011) ("Because Clearwire has satisfied the substantial service safe harbor specified in 47 C.F.R. §27.14(o)(1)(ii), Licensee is deemed to provide

Erie Diocese relied upon Clearwire's coverage for one of its six EBS licenses.[149] The Consortium for Public Education included the required educational use certification without elaboration, while the Erie Diocese included some details regarding the devices associated with educational use. With one exception, the substantial service showing for every call sign called into question by the Consortium is no different from the filings made by the Consortium parties.[150]

Furthermore, the Consortium's challenge as to the sufficiency of the entire EBS community's substantial service showings is misplaced and untimely.[151] That opportunity presented itself first when the Commission issued its February 25, 2011 Public Notice setting out the procedures for substantial service showings in the 2.5 GHz band.[152] It presented itself again when the Commission acted on each substantial service application, triggering a time frame for petitions for reconsideration. Petitioners' belated attempt to challenge the sufficiency of those showings here must be rejected as wholly outside the scope of this proceeding.

b) Clearwire's Leases Comply with FCC Requirements.

The Consortium attaches a single long-term *de facto* lease agreement between Clearwire and the School Board of Pinellas County Florida (the "Pinellas School Board" and the "Pinellas

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substantial service through its leasing arrangement with Clearwire pursuant to 47 C.F.R. §27.14(o)(3).").

149 The Erie Diocese relied on the educational use safe harbor to demonstrate substantial service for its other call signs.

150 The licensee of EBS station KZB24 relied on the educational use safe harbor and made a showing based on its provision of educational video programming. EBS station WHR506, which also is included in Petitioners' Exhibit 1, is not leased to Clearwire.

151 The EBS community generally, not just Clearwire's EBS lessors, relied on an educational use certification in those cases where the 30 percent safe harbor applied. *See, e.g.,* Substantial Service Showings of EBS Stations WNC438, WLX836, WNC547.

152 *BRS/EBS Substantial Service Public Notice.*

Lease Agreement") to support its allegations that Clearwire frustrates EBS lessors' provision of educational use. Significantly, it is not even a lease with any of the parties that filed the Consortium Petition. The Pinellas School Board is not among the Petitioners and has not alleged any frustration or abuse by Clearwire in terms of ability to meet its educational use requirements.[153] Citation to another entity's lease, even if violative of the FCC's rules (which the Pinellas Lease Agreement is not), cannot support the Consortium's claim of widespread violations.

Moreover, the Consortium has not demonstrated that the Pinellas Lease Agreement is like every other Clearwire lease. In fact, there is no standard EBS lease. EBS licensees negotiate with Clearwire regarding every aspect of the private contractual arrangement between the parties, including the manner in which the EBS licensee chooses to meet their educational use requirement.[154] Consequently, the Consortium fails to show how examination of a single lease agreement among thousands of Clearwire leases has any bearing on the proposed transactions.

3. The Commission Should Deny the Consortium's Request to Authorize a Fishing Expedition.

In essence acknowledging that they have found no basis to challenge the transactions, the Consortium asks the Commission to require Clearwire to provide evidence of its compliance with the EBS educational use requirements. However, as noted above, it is EBS licensees, and not Clearwire, to whom the educational use obligations apply. Moreover, in the course of demonstrating substantial service, Clearwire's EBS lessors already have certified to the FCC's satisfaction that they are in compliance with the educational use obligation. A *post-hoc* request

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153 The Pinellas Lease Agreement is publicly available pursuant to Florida law.

154 As explained above, satisfaction of that requirement is the responsibility of the EBS licensee. Some EBS licensees offer video services over specific channels they retain. Other licensees, like the Pinellas School Board, choose to meet this requirement through the educational use of devices and services provided over the Clearwire network.

for Clearwire or EBS licensees to provide more information than is required is not justified, is contrary to administrative due process, and is wholly irrelevant to this proceeding.[155]

4. The Consortium's Claims Regarding State Nonprofit Laws are Irrelevant and Without Merit.

The Consortium also argues that leasing EBS spectrum to "a for-profit foreign corporation" (or any for-profit corporation for that matter) "may" run afoul of state laws governing nonprofit corporations.[156] This argument is unrelated to the Transactions and in any event is groundless. In essence, the Consortium challenges the relationship between all EBS licensees and their commercial entity partners. Such a challenge ignores that the Commission has permitted and recognized this relationship in its rules for decades, to the benefit of the Consortium and other EBS licensees. It is long past the appropriate time to challenge this type of relationship, and nothing about this transaction presents any unique facts or circumstances that would warrant such a challenge in this instance.

The Consortium cites various state laws in support of their suggestion, all of which are inapplicable. Those laws apply only to the disposition of property donated for a limited purpose, *e.g.*, property given to a nonprofit in trust.[157] The Consortium does not contend that its members

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[155] The Consortium also asks that Clearwire produce detailed data for each EBS lease, including commercially sensitive information, but the Commission previously considered and rejected a proposal to require licensees to file unredacted copies of EBS leases. *BRS/EBS Second R&O,* ¶¶ 251-253.

[156] Consortium Petition at 15-16. Of course, even after the Transactions, Clearwire and Sprint will continue to be United States corporations.

[157] For instance, the Pennsylvania law petitioners cite, 15 Pa. Cons. Stat. § 5547, governs nonprofits' "[a]uthority to take and hold trust property." Petitioners' other authorities are no different. Mich. Comp. Laws § 450.2301(5) ("this act shall be deemed to permit assets *held by a corporation for charitable purposes* to be used, conveyed or distributed for noncharitable purposes) (emphasis added); *In Re Estate of Elkins*, 888 A.2d 815, 825 (Pa. Sup. Ct.) (holding that § 5547 requires evaluation of trustor's intent to determine proper disposition of money given to hospital in trust upon dissolution); Minn. Stat. § 317A.671 (preventing diversion of assets

or any other EBS licensee received EBS spectrum in trust, that the Commission "donated" the spectrum or placed any limitations on its use beyond petitioners' substantial service obligations, or that petitioners are misusing the proceeds of the lease for non-charitable purposes. Quite the opposite, the Commission's rules expressly contemplate leases to for-profit entities like Clearwire or SoftBank ***and*** the use of spectrum for commercial purposes.[158] And state laws governing nonprofits provide that, in general, a nonprofit has "the same powers as an individual to do all things necessary or convenient to carry out its affairs."[159] This includes, among other things, the power to "lease . . . and otherwise dispose of all or any part of its property."[160] Contrary to the Consortium's suggestion, these laws place no limitation on the types of entities with which a nonprofit may contract, foreign or domestic. Moreover, EBS leases provide licensees with the revenue they need to support their operations and further their educational mission. The Consortium parties cannot credibly claim that this arrangement runs afoul of any educational purpose for which they or other EBS licensees might have been formed.

Finally, the Consortium's suggestion that SoftBank's acquisition of control over Clearwire is an "involuntary transfer" that somehow affects this analysis also is unavailing. Regardless of whether Clearwire, Sprint or SoftBank beneficially holds their leases, the interests of all EBS licensees in their spectrum and their rights under their leases remain the same.

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from the "purposes for which the assets have been received . . . or from the uses and purposes expressed or intended by the original donor").

[158] *See* 47 C.F.R. § 27.1214.

[159] Model Nonprofit Corp. Act § 3.02; *see also* 15 Pa. Cons. Stat. § 5502(a)(5) (same); Mich. Comp. Laws § 450.2261(g) (same); Minn. Stat. § 317A.161(1)(5); 1 Nonprofit Orgs: Law & Taxation § 1:12 (discussing state adoption of the Model Act).

[160] Model Nonprofit Corp. Act § 3.02(5).

C. Backhaul Competition Arguments Should Be Rejected.

Taran claims that allowing Sprint to acquire *de facto* control of Clearwire would somehow harm backhaul competition. This claim is purely speculative and has no basis in reality. Although Taran argues that the Transactions would eliminate "the only remaining competitive wholesale backhaul provider,"[161] it also concedes that Clearwire does not currently offer wholesale backhaul.[162] Thus, Taran cannot reasonably claim that the Transactions will eliminate a supplier of wholesale backhaul. Instead, Taran's argument appears to be based entirely on its speculation that Clearwire might decide to provide such services in the future. Even if Taran were correct in asserting that Clearwire would have an incentive to provide wholesale backhaul in the future – and Taran provides no evidence to support its theory about Clearwire's business plans – Taran offers no explanation for why Sprint would have any less incentive to provide such services after it acquires *de facto* control of Clearwire. Putting aside what these incentives may be, Taran also fails to provide any reasoned argument about how future decisions regarding Clearwire offering wholesale backhaul would raise competition issues relevant to the Commission's consideration of the Transactions. Taran's speculation falls far short of demonstrating how the Transactions would allegedly harm the wholesale backhaul business.

D. There Is No Basis to Revisit the Commission's Approval of the Eagle River Transaction.

Crest reprises its argument that Sprint's acquisition of Eagle River Holdings, LLC's ("Eagle River") interest in Clearwire (the "Eagle River Transaction") should not have been

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161 Taran Petition at 6.

162 *Id.* at 6 n.5 (admitting that Clearwire does "not operat[e] in this manner today").

treated as *pro forma*.[163] This claim is irrelevant to the Transactions and in any event is meritless, as Clearwire demonstrated in its oppositions to the Crest and DISH Network L.L.C. ("DISH") petitions for reconsideration of the Eagle River Transaction.[164] The Eagle River Transaction involved routine *pro forma* applications that were properly processed and approved by the Commission. Contrary to Crest's claim, that transaction did not give Sprint *de facto* control over Clearwire or the "unilateral" power to block consideration of any offer but Sprint's[165] – as demonstrated by the fact that a Special Committee of Clearwire's Board has, consistent with its fiduciary duties and in consultation with its independent financial and legal advisors, engaged in an evaluation of the DISH proposal.[166] Further, as Clearwire has explained, the elimination of Eagle River's special rights under the November 28, 2008 Equityholders' Agreement ("EHA") and the December 8, 2010 Amendment to the EHA did not change the balance of power under the EHA.[167]

E. Additional Claims Are Unrelated to This Transaction.

A number of parties have raised other meritless issues or issues of general applicability not specifically related to the Transactions. For example, Greenlining urges the Commission to take actions to "preserve net neutrality"[168] and the NJ Rate Counsel asks that SoftBank be required to commit that Sprint will continue to abide by CTIA's Code for Wireless Service,

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163 Crest Petition at 30-31.

164 *See* Clearwire Opposition to Petition for Reconsideration, File Nos. 0005480932, et al. (filed Jan. 14, 2013) ("Clearwire Opposition to Crest Petition"); Clearwire Opposition to Petition for Reconsideration, File Nos. 0005480932, et al. (filed Jan. 22, 2013) ("Clearwire Opposition to DISH Petition").

165 Clearwire Opposition to Crest Petition at 4-6.

166 *Clearwire Proxy Statement* at 35.

167 Clearwire Opposition to DISH Petition at 9-10.

168 Greenlining Comments at 11.

primarily the voluntary guidelines addressing "bill shock."[169] These requests have no nexus to the Transactions and, thus, should not be considered as part of this proceeding.[170] As explained above, the Commission has held repeatedly that "it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)."[171] To the extent that the matters raised by Greenlining and others warrant consideration by the FCC, they should be addressed in industry-wide rulemaking proceedings.[172] As the Commission has noted, merger reviews are not the proper forum for making "those legal determinations [that] would have *industry-wide application*, as well as legal and practical implications that extend far beyond the contours of [the] particular merger."[173] Both net neutrality and bill shock issues are the subject of ongoing proceedings at the Commission. Any further action on such matters should be taken in these long-established dockets, not as part of the Commission's review of applications that will have

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[169] NJ Rate Counsel Comments at 25-26. Both Sprint and Clearwire voluntarily support CTIA's Code for Wireless Service. *See* CTIA Consumer Code: Questions and Answers, http://www.ctia.org/consumer_info/service/index.cfm/AID/10549.

[170] For the same reason, there is no basis for Greenlining's request to launch a number of ill-defined and wide-ranging investigations. Greenlining Comments at 7-10 (requesting investigations into, among other topics, the Transactions' effect on service quality, diversity and jobs). Greenlining points to no facts that would warrant such investigations.

[171] *AT&T-BellSouth Order,* ¶ 22; *see also* supra note 125.

[172] *See, e.g., Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee,* Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶ 30 (2002) (To the "extent commenters raise concerns regarding an industry-wide trend . . ., we conclude that the appropriate forum to consider such issues is a rulemaking of general applicability[.]*"); Applications of Cellco Partnership d/b/a/ Verizon Wireless and AT&T, Inc., Memorandum* Opinion and Order and Declaratory Ruling, 25 FCC Rcd 10985, ¶ 67 (2010); *SNET-SBC Order,* ¶ 29.

[173] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee,* Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 126 (2000) (emphasis added). The Supreme Court has agreed, finding that rulemaking proceedings are "generally a 'better, fairer, and more effective' method" for the purposes of "implementing a new industry-wide policy" than are the "uneven application of conditions in isolated" adjudicatory decisions. *Cmty. Television of So. California v. Gottfried,* 459 U.S. 498, 511 (1983).

no effect on net neutrality or any of the other issues raised by Greenlining or the NJ Rate Counsel.[174]

VIII. The Petitions Should Be Dismissed for Lack of Standing.

As explained in the prior sections, none of the petitions has any merit or provides any basis for questioning the substantial public interest benefits of the Transactions. The Commission accordingly has ample grounds to dismiss the petitions on the merits. The petitions, however, also are flawed on procedural grounds. Unlike rulemaking proceedings, where any interested party may provide its views to the Commission, the rules governing license transfer proceedings require parties filing petitions to deny to establish standing. This is a statutory requirement set forth in section 309(d)(1) of the Communications Act, which permits only a "party in interest" to file a petition to deny an application.[175]

To establish standing as a party in interest, a petitioner must show (1) that it would suffer a "direct injury" that is "distinct and palpable"; (2) that this injury is "fairly traceable" to the FCC's grant of the challenged application; and (3) "that it is likely, as opposed to merely speculative, that the alleged injury would be prevented or redressed" if the application were

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[174] *Verizon-ALLTEL Order,* ¶¶ 186-191 (rejecting proposed open network conditions, finding that petitioners failed to demonstrate that "this transaction will cause the potential harms it seeks to remedy"), *aff'd,* Order on Reconsideration, FCC 12-155, ¶¶ 20-23 (rel. Dec. 19, 2012) (affirming the Commission's refusal to impose various open network conditions in the *Verizon - ALLTEL Merger Order*, finding that "the proposed conditions are not narrowly tailored to any harm specific to this transaction" and noting the Commission has "already adopted certain Open Internet rules that apply to all mobile broadband Internet access service providers"); News Release, *FCC Chairman Julius Genachowski Announces Major Progress in Usage-Based Alert Program to Protect Mobile Consumers from 'Bill Shock'; Wireless Carriers Meet and Beat Deadline to Provide Free Data, Voice, Text & International Alerts*, 2012 FCC LEXIS 4356 (Oct. 17, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316864A1.pdf; Public Notice, WT Docket No. 11-186, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, 26 FCC Rcd 15595 (2011) (seeking comment on measures taken by wireless carriers in order that consumers can avoid "bill shock").

[175] 47 U.S.C. § 309(d)(1); *see also* 47 C.F.R. § 1.939(d).

denied.[176] The parties filing petitions to deny in this proceeding – Crest, Taran, Crow Creek Sioux, CWA, the CLEC Petitioners, the Consortium, and LSI – fail to satisfy these standing requirements and/or the related pleading requirements described below, and their petitions therefore should be dismissed on procedural grounds as well.

As an initial matter, the Commission has repeatedly found that none of the three prongs of the standing test are met when a petition alleges misconduct or harms that are not "cognizable" by the Commission, such as injuries arising from breach of contract or breach of fiduciary duty.[177] As explained in Section V above, at bottom the Crest and Taran Petitions consist entirely of such non-cognizable claims, and for this reason alone the Commission should dismiss both petitions for lack of standing.[178]

Crest, Taran, Crow Creek Sioux, CWA, the CLEC Petitioners, and the Consortium also fail the individual prongs of the standing test. These parties do not allege that grant of the

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[176] *See, e.g., Wireless Properties of Virginia, Inc., Assignor, and Nextel Spectrum Acquisition Corp., Assignee; Applications for Assignment of Commercial Educational Broadband Service Station WQGK277,* Memorandum Opinion and Order, 23 FCC Rcd 7474, ¶ 9 n.41 (WTB 2008); *Paging Systems, Inc., Assignor, and American Telecasting of Oklahoma, Inc., Assignee, Application for Assignment of Broadband Radio Service Station WHT743,* Memorandum Opinion and Order, 22 FCC Rcd 1294, ¶ 7 n.24 (WTB 2007); *Applications to Assign Wireless Licenses from WorldCom, Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp.,* Memorandum Opinion and Order, 19 FCC Rcd 6232, ¶ 19 (WTB & MB 2004); *Verizon Wireless-SpectrumCo Order,* ¶ 36; *MCI Telecommunications Corp., Assignor, and Echostar 110 Corp., Assignee,* Order and Authorization, 16 FCC Rcd 21608, ¶ 30 (1999).

[177] *Weblink Wireless, Inc., Petition for Reconsideration of DA 01-1143,* Memorandum Opinion and Order, 17 FCC Rcd 24642, ¶ 13 (WTB 2002); *Instapage Network Ltd.'s Informal Request for Retroactive Bidding Credits,* Order on Reconsideration, 19 FCC Rcd 20356, ¶ 9 (WTB 2004); *Improving Public Safety Communications in the 800 MHz Band,* Order, 26 FCC Rcd 9187, ¶ 5 n.11 (PSHSB 2011).

[178] The Consortium Petition should be dismissed for another reason. On January 14, 2013, the Consortium initiated contractual disputes with Clearwire concerning pre-existing spectrum leases. Clearwire is in the early stages of analyzing the facts behind these private, contractual disputes, which, like those involving Crest and Taran, are not cognizable by the FCC.

Applications will cause the petitioners to suffer a "direct, tangible, or substantial" harm.[179] Indeed, several Petitions fail to allege *any* petitioner-specific harm that would flow from an FCC decision to grant the Applications. Even assuming, *arguendo*, that the requisite kind of injury has been alleged, these parties do not make clear how that injury could be "fairly traceable" to the grant of the Applications, rather than to other circumstances. Finally, these parties fail to demonstrate that it is likely, as opposed to merely speculative, that any alleged injuries would be prevented if the Applications were denied.[180]

Finally, as part of the same provision that requires "party in interest" standing, the Communications Act requires that petitions to deny must "be supported by affidavit of a person or persons with personal knowledge" of the key facts alleged.[181] Most of the petitioners do not

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[179] *See Applications of Caribbean SMR, Inc., for Assignment of SMR Call Signs WPDF781, WPDF782 and WPDF783 to Nextel License Holdings 5, Inc.,* Order, 16 FCC Rcd 15663, ¶ 2 (WTB 2001) ("[I]n assignment or transfer of license proceedings, a party does not have standing unless it can establish that a grant of the application complained of would result in, or be reasonably likely to result in, some injury of a direct, tangible, or substantial nature.") (internal quotation marks and citations omitted).

[180] *See* Crest Petition (claiming that Sprint has violated corporate and fiduciary obligations, but not alleging any relevant connection between those state-law claims and the Transactions or explaining how the harms alleged could be fairly traceable to grant of the Applications); Taran Petition (same); CLEC Petitioners Petition (claiming that Sprint owes money to the CLECs, but not alleging any relevant connection to the Transactions or that grant of the Applications would cause new indebtedness); Crow Creek Sioux Petition (same); CWA Petition (claiming that grant of the Applications "will not lead to significant job creation at Sprint," but not alleging any cognizable, specific harm that would be caused to CWA members); Consortium Petition (claiming that Clearwire has already failed to comply with FCC requirements regarding EBS spectrum, but not alleging any relevant connection between these claims and the Transactions).

[181] 47 U.S.C. § 309(d)(1) ("The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public convenience, interest, and necessity]. . . . Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."); *see also* 47 C.F.R. § 1.939(d).

attach a supporting affidavit and should be dismissed for this reason as well.[182] As the Commission recently held in dismissing a petition to deny for failing to include a supporting affidavit, "[i]t is important for the orderly processing of applications and petitions that parties adhere to the Commission's pleading practices outlined in Part I of the Commission's rules."[183] The same result should apply here, particularly since the rule in question implements a key statutory safeguard meant to ensure that the Commission, in assessing the merits of an application, focuses its scarce resources on factually germane issues that have some credible basis in the "personal knowledge" of a party in interest.[184] The Commission should dismiss these petitions for failing to comply with this important mandate, as well as for failing to establish party-in-interest standing for the various reasons described above.

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[182] *See* Taran Petition, CLEC Petitioners Petition, CWA Petition, Crow Creek Sioux Petition, LSI Petition, and Consortium Petition.

[183] *United States Cellular Corporation Constructed Tower Near Fries, Virginia*, Order, 24 FCC Rcd 8729, ¶ 15 (2009).

[184] 47 U.S.C. § 309(d)(1).

IX. Conclusion

For the foregoing reasons, the Applicants request that the Commission deny the petitions to deny and requests to impose conditions on the Applications. The Commission should expeditiously grant the amended Applications without qualification.

Respectfully submitted,

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February 12, 2013

Certificate of Service

I hereby certify that on this 12th day of February, 2013, I caused a true and correct copy of the foregoing Joint Opposition to Petitions to Deny and Reply to Comments, with attached Declaration of Tadashi Iida, to be mailed by electronic mail to:

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Additionally, on this 12th day of February, 2013, I caused true and correct copies of the foregoing Joint Opposition to Petitions to Deny and Reply to Comments, with attached Declaration of Tadashi Iida, to be mailed by U.S. mail, postage prepaid, to:

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/s/ Ruth E. Holder
Ruth E. Holder

Exhibit 1

Declaration of Tadashi Iida

DECLARATION OF TADASHI IIDA

1. My name is Tadashi Iida. I am the Executive General Manager, Technology Administration Division, Technology Unit of SOFTBANK MOBILE Corp. ("SoftBank Mobile"). I have prepared this declaration in connection with the Joint Opposition to Petitions to Deny and Reply to Comments being filed by SOFTBANK CORP. ("SoftBank"), Starburst I, Inc., Starburst II, Inc. ("Starburst II") and Sprint Nextel Corporation ("Sprint") in connection with their joint applications to the Federal Communications Commission for SoftBank and Starburst II to acquire control of Sprint. All of the information contained in this declaration is based on my personal knowledge and my review of SoftBank business records kept in the ordinary course of business.

2. In my role as Executive General Manager, Technology Administration Division, Technology Unit, I have responsibility for matters relating to the overview and administration of the networks of SoftBank Mobile. As a result of my responsibilities, I am aware of the equipment used in the networks of SoftBank's telecommunications companies – SoftBank Mobile, SOFTBANK BB Corp. and SOFTBANK TELECOM Corp. (together, the "SoftBank Telecommunications Companies") – and the equipment used in the network of SoftBank's affiliate Wireless City Planning, Inc. ("Wireless City Planning").

3. The SoftBank Telecommunications Companies do not use any equipment manufactured by Huawei Technologies Co., Ltd, or its affiliates (collectively, "Huawei") in their core network infrastructure.

4. Wireless City Planning uses some Huawei equipment in its network. Wireless City Planning purchases only radio equipment from Huawei, and that equipment is used only at the

edge of the Wireless City Planning network, not for core switching and routing functions.

Wireless City Planning has no current plans to purchase any core equipment from Huawei.

[Remainder of this page intentionally left blank.]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 12, 2013

Tadashi Iida
Executive General Manager
Technology Administration Division
Technology Unit
SOFTBANK MOBILE Corp.

Signature Page of Declaration of Tadashi IIda