

**The George Mason University Instructional Foundation, Inc.
F Corporation
The Michael Kelley Revocable Trust d/b/a Shannondale Wireless
703-691-1119**

July 24, 2008

Ms. Marlene H. Dortch
Secretary
The Federal Communications Commission
Washington, D.C., 20554

VIA ECFS

In Re: Sprint Nextel-Clearwire Merger WT Docket No. 08-94; DA 08-1477

I am writing on behalf of The George Mason University Instructional Foundation, Inc., licensee of EBS stations WHB 652, WLX 728, WLX 235, KA 88815 and KA 88816, its wholly owned for-profit subsidiary, F Corporation, licensee of BRS station WHT 659, and the Michael Kelley Revocable Trust, d/b/a Shannondale Wireless, licensee of BRS station WMY 489. Collectively we are submitting these comments to the FCC in support of the creation of a “New Clearwire” by merging the 2.5 GHz assets of Sprint Nextel and Clearwire Corporation accompanied by the infusion of monetary support from Comcast, Intel, Time Warner, Google, Bright House Networks and Triology.

The 2.5 GHz band has had a troubled history since its designation in the early 1960s for use in the Instructional Television Fixed Service. Since the early 1980s, there have been various attempts by the Commission to breathe new life into the band. The first resulted in the commercialization of the E and F Groups, giving rise to MMDS and with it the opportunity for ITFS licensees to lease excess capacity. Emerging from this was the Wireless Cable industry. Next the FCC allowed analog compression on the channels to provide additional program streams. A few years later, the FCC provided for digital one and two-way capability so that Wireless Cable operators could include high speed data services along with their Wireless Cable programming. But with the exception of a few successful operators, Wireless Cable was stillborn and two-way data services could not revive it. The Wireless Cable Association changed its name to the Wireless Communications Association (keeping its logo) and began working with the FCC on another rulemaking that would re-band 2.5 GHz to provide for fixed and mobile high speed broadband, video, VoIP and data services along with high site, high power fixed services. The major players got new names. ITFS

became EBS; MMDS was simplified to BRS. Broadband was prominent in the names of both services.

During the time that the FCC, the ITFS Association, the Catholic Television Network, and the WCA were working together with the major industry players to craft these new liberating rules, Worldcom, a major licensee of 2.5 GHz spectrum went bankrupt, Nextel GMUIF, F CORP, KELLEY, Pg 2

purchased Worldcom's 2.5 GHz assets at auction; Sprint, with its own stable of 2.5 GHz licenses, purchased Nextel, and Craig McCaw bought Clearwire, another large holder of 2.5 GHz licenses. These two national companies and a number of smaller regional and local companies all began to launch or talk about launching broadband services over this newly re-banded spectrum using WiMAX or pre-WiMAX technology.

As we submit these comments, the rules are still not completely finalized, comments are still being received by the FCC, and both Sprint-Nextel and Clearwire have concluded that neither one alone has the financial wherewithal to build out a nationwide fixed and mobile broadband service at 2.5 GHz. After competing fiercely with each other over the last few years acquiring leases and licenses, the two have now petitioned the FCC to approve the merger of their 2.5 GHz leases and licenses into a New Clearwire, 27% owned by current Clearwire stockholders, 51% owned by current Sprint stockholders, and the rest owned by the stockholders of Comcast, Time Warner, Google, Intel, Bright House Networks and Triology who would contribute around 3.2 billion in cash to the new venture and, except for Intel, would each have less than a 10% equity stake in the new company.

The GMUIF leased $\frac{3}{4}$ of its EBS spectrum to Clearwire; GMUIF's wholly owned subsidiary, F Corporation, leased $\frac{3}{4}$ of its BRS spectrum to Sprint Nextel. The Michael Kelley Revocable Trust leased or transferred 100% of its BRS spectrum to Sprint Nextel. The fierce competition between the two players allowed us and most all of the other EBS and BRS licensees to maximize lease or transfer of license revenues before the two companies realized that there was no chance for either one to go it alone. Competition worked and provided educators and other licensees with opportunities to weigh competing offers not just from Clearwire and Sprint, but in some markets from smaller players with equally appealing offers. It was even possible to play one suitor off against another in the process of determining where the secondary market values really were for this valuable spectrum. At this point, with most of the licensed 2.5 spectrum either leased or transferred, there is really no "anti-competitive" argument against the

creation of a single mobile and fixed broadband provider out of these two former competitors. Plus, there are other carriers planning wireless broadband deployments on other spectrum.

GMUIF and F Corp started in instructional television/wireless cable in 1981 and continue to operate very successfully for the benefit of George Mason University. Shannondale Wireless received its first license in 1986 and had an experimental digital license in the 2150-2160 band from April 1991 to September 1994 (KF2XJR). Over the course of those 27 years, we have learned much about the difficulties presented by these microwave frequencies. It is a simple law of physics that a successful nationwide mobile service in the 2.5 GHz band will require a huge number of cell sites with their attendant site acquisition and leasing costs, their backhaul costs, and their electrical power costs.

In addition to the immense infrastructure costs, there will be high hurdles to overcome involving the consumer devices. Consumers, particularly the early adopters, will not

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tolerate the kind of spotty service that will be inevitable in the first 3 years or more after the national build out begins. To prevent consumer frustration, devices should operate not only on the emerging WiMAX network but also at Wi-Fi hot spots and even on Sprint's cellular EVDO network. The chipsets will thus need to operate on at least two and ideally three separate frequency bands (2.5 GHz, 2.3 GHz, and 1.9GHz) and with all three different modulation/multiplexing schemes. Along with this versatility, these consumer devices should be sleek, light, multi-functional, and visually appealing. The job of getting all this right at an attractive price is a formidable one indeed

Sprint Nextel and Clearwire were unrealistic to think they could each independently build competing nationwide networks and succeed in amortizing the immense upfront costs by offering competing broadband services to consumers. In our opinion, only by joining forces and bringing in additional investors can these two companies ever hope to build out a nationwide fixed and mobile broadband service at 2.5 GHz. If allowed to join forces, they will be the only nationwide player in 2.5 GHz band.

If the FCC were to reject the request of these two companies to combine their efforts and their 2.5 GHz assets, the Commission would kill any hope for nationwide fixed and mobile broadband services on the 2.5 GHz spectrum, thus dooming the spectrum once again to becoming the underachiever that much of it has been since it was first carved out for instructional use in the

early 1960s. We believe that high-speed fixed and mobile broadband service can be an attractive offering – in urban as well as rural areas – and that the proposed New Clearwire has a chance of success if the FCC approves the proposed new venture. Neither company alone will have any chance if their merger plans are not approved.

Clearly, the road New Clearwire will face is not going to be an easy one. If approved, the joint venture could still fail for any number of reasons including the absence of a strong market for the broadband commodity they are proposing to sell, a business plan flawed by over or under pricing those services, robust competition from other carriers in other bands, or the failure to produce really attractive multi-band, multi-mode consumer devices. Failure can also occur if the equity partners have underestimated the amount of infrastructure needed to provide ubiquitous, high quality service and the immense amounts of new equity to build that infrastructure cannot be found. In short, what the FCC is being asked to approve will still need lots and lots of good luck and good sense to succeed.

But we believe that this partnership is the only way at this point in time and in this economy that a nationwide fixed and mobile broadband service based on WiMAX technology will ever be built in the U.S. on the newly re-banded 2.5 GHz spectrum. The odds may indeed be long, but there is no other bet to be made. Thus we wholeheartedly support the proposed partnership and urge that the Commission approve it as quickly as legally possible.

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Respectfully Submitted,

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