

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Sprint Nextel Corporation and)	WT Docket No. 08-94
Clearwire Corporation)	DA 08-1477
)	FCC File Nos. 0003367640 <i>et al.</i>
Request for FCC Consent to Transfer Control of)	
Licenses and Authorizations)	

**COMMENTS OF
WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCA”), by its attorneys and in response to the Commission’s June 24, 2008 *Public Notice*,¹ hereby submits its comments in support of the above-captioned applications to combine the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) licenses, leases and related assets held by Sprint Nextel Corporation (“Sprint Nextel”) and Clearwire Corporation (“Clearwire”), respectively, and create a new entity (“New Clearwire”) that intends to deploy the combined assets to construct and operate the first nationwide WiMAX-based wireless broadband network in the 2496-2690 MHz (“2.5 GHz”) band. Prompt Commission approval of the transaction will facilitate the Commission’s efforts to introduce a wireless broadband pipe by advancing the core public interest objectives of the Commission’s comprehensive rewrite of the 2.5 GHz bandplan and associated rules, and by accelerating the evolution and deployment of new

¹ See *Public Notice*, “Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations,” WT Docket No. 08-94, DA 08-1477 (rel. June 24, 2008) (modified by *erratum*, *Public Notice*, “Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations,” WT Docket No. 08-94 (rel. July 11, 2008)).

WiMAX-based wireless broadband services by New Clearwire and a host of other service providers.²

WCA is the trade association of the wireless broadband industry. Its membership includes, *inter alia*, system operators, equipment manufacturers, technical consultants and others who provide or support the provision of wireless broadband service in the 2.5 GHz band. As the Commission is aware, WCA spearheaded the effort to reform the regulatory framework for the 2.5 GHz spectrum – indeed, the new 2.5 GHz bandplan and many of the associated rules are based largely on proposals WCA developed and put forth in WT Docket No. 03-66.³ Since the Commission’s adoption of a new 2.5 GHz band regulatory regime based largely on WCA’s proposals, WCA’s members have begun to make the substantial investments necessary to transition markets to the new 2.5 GHz bandplan and launch new wireless broadband systems under that model. WCA thus has a significant interest in the above-captioned transaction insofar as it maximizes the benefits

² 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*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) [*“BRS/EBS R&O”*]; *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*, Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606 (2006); *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*, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, 23 FCC Rcd 5992 (2008) [*“BRS/EBS Third Order on Reconsideration”*].

³ See “A Proposal For Revising The MDS and ITFS Regulatory Regime,” Wireless Communications Ass’n Int’l, Nat’l ITFS Ass’n and Catholic Television Network, RM-10586 (filed Oct. 7, 2002); “First Supplement To ‘A Proposal For Revising The MDS And ITFS Regulatory Regime,’” RM-10586 (filed Nov. 14, 2002); “Second Supplement To ‘A Proposal For Revising The MDS And ITFS Regulatory Regime,’” RM-10586 (filed Feb. 7, 2003).

of the new 2.5 GHz regulatory regime for all stakeholders in the BRS/EBS industry and consumers.

It is a matter of record that Sprint Nextel and Clearwire have made a long-term commitment to deliver on the promise of the new 2.5 GHz band by deploying systems based on the IEEE 802.16(e) 2005 mobile WiMAX standard.⁴ Indeed, as widely reported in the trade press, Sprint Nextel is already testing 2.5 GHz mobile WiMAX in the Baltimore, MD, Chicago, IL and Washington, D.C. markets, with plans to launch the service commercially in Baltimore during September 2008 and in Chicago and Washington, D.C. later this year.⁵ Likewise, Clearwire is testing mobile WiMAX equipment in Portland, OR, and has announced its intent to launch WiMAX service commercially in that market – and in Las Vegas, NV, Atlanta, GA and Grand Rapids, MI – by the end of this year.⁶ And, each company has already invested enormous resources towards preparing additional markets across the country for launch of mobile WiMAX systems under the new 2.5 GHz bandplan.⁷

⁴ See, e.g., Application of Clearwire Corporation, Transferor, and New Clearwire Corporation, Transferee, FCC File No. 0003368272, Exhibit 1, “Description of Transaction and Public Interest Statement,” at 16 (filed June 6, 2008) [“Public Interest Statement”].

⁵ See Jones, “Music in the Air for Sprint’s WiMAX?” *Unstrung* (July 15, 2008), available at http://www.unstrung.com/document.asp?doc_id=159050 (last viewed July 16, 2008); Hachman, “Sprint to Launch WiMAX This September,” *PC Magazine* (July 15, 2008), available at <http://www.pcmag.com/article2/0,2817,2325611,00.asp> (last viewed July 16, 2008); Reardon, “Sprint to launch WiMAX service in September,” *CNet.com* (June 18, 2008), available at http://news.cnet.com/8301-10784_3-9972229-7.html (last viewed July 16, 2008). Fitchard, “NXTcomm08: Sprint to turn up Baltimore WiMAX network in September,” *TelephonyOnline* (June 18, 2008), available at <http://telephonyonline.com/wimax/news/sprint-baltimore-wimax-network-0618> (last viewed July 23, 2008).

⁶ See, e.g., “Sprint and Clearwire aiming for 4Q-08 WiMAX launches,” *Telegeography* (July 16, 2008), available at http://www.telegeography.com/cu/article.php?article_id=24079&email=html (last viewed July 16, 2008); Emigh, “Clearwire launches new WiMAX beta in Portland, Oregon,” *BetaNews* (July 10, 2008), available at <http://www.betanews.com> (last viewed July 16, 2008).

⁷ See Public Interest Statement at 21, 28-29. Prior to submission of the above-captioned applications, Sprint Nextel and Clearwire had transitioned more than half of the nation’s 493

Notwithstanding these efforts, Sprint Nextel and Clearwire have determined that it is not possible for either company to fund, construct and operate a nationwide, mobile WiMAX 2.5 GHz network by itself.⁸ The two companies thus have concluded that consolidation of their BRS/EBS assets is the only feasible means of achieving the synergies, economies of scale and industry-wide benefits inherent to a coast-to-coast mobile WiMAX network.⁹ This, in turn, has prompted Intel Corporation, Google Inc., Comcast Corporation, Time Warner Cable and Bright House Networks to collectively invest \$3.2 billion in New Clearwire.¹⁰ Hence, “New Clearwire will have the capacity, scale, and financing necessary to enter the highly capital intensive enterprise of building a new competitive, nationwide advanced mobile wireless network and offer next-generation wireless broadband services to the American public.”¹¹ To quote Commissioner Adelstein, the proposed transaction will “facilitate a ‘third’ broadband channel to provide consumers everywhere the benefits of a competitive, high-quality wireless broadband network.”¹²

Basic Trading Areas to the new 2.5 GHz bandplan, with many more scheduled to be completed this summer. *See id.* at 29 (noting that Sprint Nextel has completed transitions in 216 BTAs and that Clearwire has completed transitions in 37 BTAs).

⁸ *See, e.g., id.* at 21 (“Completing a new, nationwide network requires billions of dollars. Applicants cannot fund this scope of deployment out of cash flow from their existing operations given the turbulence of the current economic environment. In addition, tightened credit markets make it increasingly difficult for companies to attract capital funding for new business investment.”) (footnote omitted).

⁹ *See id.* at 2.

¹⁰ *See id.* at 3-4 and n. 4.

¹¹ *Id.* at 2. *See also id.* at 23-24 (describing operational synergies created by combining Sprint Nextel’s and Clearwire’s 2.5 GHz assets).

¹² *Federal Communications Commission News Release*, “Commissioner Jonathan S. Adelstein Responds to Clearwire/Sprint Nextel Announcement” (May 7, 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-282014A1.doc. *See also* Commissioner Deborah Taylor Tate, “U.S. Spectrum Policy: Bringing the Digital Dividend to All Americans,” *La lettre de l’Autorité* (July/August 2008) (“[E]ntrepreneurially minded firms are combining their

The myriad benefits of the Sprint Nextel-Clearwire combination are discussed at length in the above-captioned applications and will not be repeated in detail here. Most important, combining the assets of the two companies will ignite faster introduction of 2.5 GHz mobile WiMAX service and thus introduce additional new broadband competition across the country.¹³ This, of course, is precisely the sort of accelerated broadband deployment that the Commission hoped to encourage by overhauling the 2.5 GHz bandplan and associated rules in WT Docket No. 03-66.¹⁴

In turn, those with a direct or indirect stake in the 2.5 GHz band and other WiMAX-capable spectrum (including but not limited to equipment manufacturers, chipmakers, designers of software and broadband-related computer applications, and system operators) will benefit because New Clearwire's deployment of mobile WiMAX on a national scale, in tandem with the additional activities of New Clearwire's

spectrum, technology, and business strategies to offer broadband service in new ways. Sprint and Clearwire, for example, have joined cable companies Comcast and Time Warner, along with technology firms like Intel and Google, to provide WiMAX, an exciting new mobile broadband service.”), available at http://www.fcc.gov/commissioners/tate/articles/arcep_0708.pdf.

¹³ New Clearwire plans to cover up to 140 million people with its 2.5 GHz network by the end of 2010, “building on the Applicants’ collective deployment experience and leveraging [Sprint Nextel’s] existing network infrastructure through separately negotiated commercial agreements.” Public Interest Statement at 19. *See also id.* at 16-17 (discussing New Clearwire’s ability to compete with wireline and wireless broadband incumbents). New Clearwire also will offer non-exclusive wholesale access to its network and non-exclusive wholesaling arrangements with a number of its strategic investors. *See id.* at 2.

¹⁴ *See, e.g., BRS/EBS Order*, 19 FCC Rcd at 14254 (new rules provide BRS/EBS licensees “with greatly enhanced flexibility in order to encourage the highest and best use of spectrum to provide for the rapid deployment of innovative and efficient communications technologies and services.”) (footnotes omitted); *BRS Third Order on Reconsideration*, 23 FCC Rcd at 6406 (Commission adopted BRS/EBS substantial service standard to, *inter alia*, “promote investment in and rapid deployment of new technologies and services, and to facilitate the availability of broadband to all Americans”) (footnote omitted).

investors,¹⁵ will spur development of new products and services based on WiMAX technology.¹⁶ Intel, for instance, will work with manufacturers to embed WiMAX chips into Intel[®] Centrino[®] 2 processor technology-based laptops and other Intel-based mobile Internet devices, and will market New Clearwire's service in association with Intel's performance notebook PC brand.¹⁷ Google will partner with New Clearwire in the development of Internet services, advertising services and applications for mobile WiMAX devices.¹⁸ All totaled, the economies of scale created by high volume production of WiMAX-based equipment and associated products and services will result in lower costs at all levels of the WiMAX "ecosystem," with consumers being the ultimate beneficiaries of the entire process.¹⁹

¹⁵ See Public Interest Statement at 25 (discussing joint effort with Google to develop new applications and services for WiMAX networks, and efforts by Intel to embed WiMAX chips "into millions of laptops and other mobile Internet devices.").

¹⁶ See, e.g., *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15324 (2007) ("To the extent licensees are better able to create large service areas and achieve economies of scale, they are better able to offer new and innovative services, including advanced broadband services.").

¹⁷ See Intel Corporation News Release, "Sprint Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company" (May 7, 2008), available at http://www.intel.com/pressroom/archive/releases/20080507corp_a.htm (last viewed July 21, 2008).

¹⁸ *Id.*

¹⁹ See Public Interest Statement at 26 (New Clearwire's extension of mobile WiMAX technology throughout the United States "will help provide the necessary scope to provide incentives for . . . manufacturers to embed WiMAX chips in all types of consumer electronic devices By encouraging the widespread availability of innovative devices embedded with WiMAX chips, . . . New Clearwire will enable other network operators in other bands to take advantage of a growing, innovative ecosystem of WiMAX devices and applications."); See also "WiMAX chipset prices have been falling, encouraging adoption of smaller mobile devices," *Communications Daily*, at 9 (July 16, 2008) ("Prices for the chipset's baseband and radio frequency components have come down from the \$35 range of a few years ago to below \$25, and will drop below \$10 in 2011, ABI analyst Philip Solis said. ABI expects chipset shipments 'well into the hundreds of millions,' even when global subscriber numbers reach the high tens of millions, it said. It said many devices will include WiMAX capabilities 'well before' users subscribe to WiMAX-based service plans, and some subscribers will have multiple WiMAX enabled devices on one subscription plan.").

Moreover, the Commission should not underestimate the extent to which the proposed transaction will spur the growth and development of smaller and midsized WiMAX operators. To cite just a few examples:

- Xanadoo Corporation, a 2.5 GHz operator providing wireless broadband service in Texas, Oklahoma and Illinois, has announced its deployment of mobile WiMAX service in Springfield, IL, with plans to launch the service in its other markets at a later date.²⁰
- Sioux Valley Wireless recently launched WiMAX service to customers in and around Madison, South Dakota (the first small city in the State to have access to the technology), with laptop cards for the service scheduled to be available in early 2009.²¹
- DigitalBridge Communications, a 2.5 GHz wireless broadband service operator serving smaller and rural markets, recently launched the first commercially available mobile WiMAX network in the United States, providing service to Jackson Hole, WY.²²

Success for these and other similarly situated operators will be tied directly to the reduced costs and the innovative services made possible by introduction of mobile

²⁰ See “Xanadoo upgrading to mobile WiMAX, *Fierce Wireless* (April 1, 2008), available at <http://www.fiercewireless.com/ctialive/story/xanadoo-upgrading-mobile-wimax/2008-04-01> (last viewed July 17, 2008). As noted *supra*, wireless broadband service providers outside the 2.5 GHz band also stand to benefit substantially from the ongoing development of mobile WiMAX. See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion*, Firth Report, FCC 08-88, ¶ 17 n. 43 (2008) (“The 802.16 standard specifies a range of operating frequencies from 2 to 66 GHz. Initial WiMAX products operate in the internationally available 2.3 GHz, 2.5 GHz, 3.3 GHz and 3.4-3.8 GHz licensed bands, and WiMAX computer chips for use in the 5.8 GHz unlicensed bands are becoming available.”) (citation omitted); Barthold, “WiMAX Forum plots for 700 MHz,” *Telecommunications Online* (Feb. 12, 2008), available at http://www.telecommagazine.com/newsglobe/article.asp?HH_ID=AR_3956 (last viewed July 17, 2008).

²¹ See Myers, “Madison Becomes Wireless Leader,” *Argusleader.com* (July 2, 2008, available at <http://www.argusleader.com> (last viewed July 21, 2008)).

²² See “DigitalBridge Communications deploys the first Mobile WiMAX network using WiMAX Forum[®] Certified[™] equipment,” DigitalBridge Communications Press Release (June 30, 2008), available at http://www.wcai.com/images/pdf/2008_digitalbridge06-30.pdf (last viewed July 17, 2008).

WiMAX on a national scale. Again, consumers will be the ultimate beneficiaries, particularly in areas where smaller and midsized operators are indispensable sources of broadband service.

In sum, the proposed creation of New Clearwire and consolidated operation of the Sprint Nextel and Clearwire 2.5 GHz assets presents the Commission with a unique opportunity to maximize the benefits of its new 2.5 GHz bandplan and to spur widespread deployment of WiMAX technology by New Clearwire and others. WCA thus supports the transaction and requests that the Commission grant the above-captioned applications without delay.

Respectfully submitted,

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July 24, 2008