

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Applications of Sprint Nextel Corp. and ) WT Docket No. 08-94  
Clearwire Corporation for Consent to Transfer )  
Control of 2.5 GHz Licenses and Authorizations )

File Nos. 0003462540, *et al.*

**COMMENTS**

W. Kenneth Ferree and Barbara S. Esbin, of The Progress & Freedom Foundation (“PFF”), hereby submit these comments on the above-referenced applications.<sup>1</sup> PFF is a private, non-profit, non-partisan research institution established in 1993 to study the digital revolution and its implications for public policy.

The Commission’s review of the proposed transaction involving Sprint Nextel Corporation and Clearwire Corporation is yet in its earlier stages, but recent history suggests that it may be many months before a final decision is rendered in this matter. That would be unfortunate, both for the parties involved and for the Commission. For the parties, undue delay in processing may imperil the viability of the new wireless broadband company to be known as

---

<sup>1</sup> W. Kenneth Ferree is President of The Progress & Freedom Foundation. Barbara S. Esbin is a Senior Fellow and Director of the Center for Communications and Competition Policy at The Progress & Freedom Foundation. The views contained in these comments are the views of the authors and do not necessarily reflect the views of the directors, officers, or staff of the Foundation.

“New Clearwire.” For the Commission, yet another example of an inability to carry out its statutory licensing obligations in a fair and timely manner would likely cause Congress to more seriously consider the imposition of statutory deadlines for such proceedings.

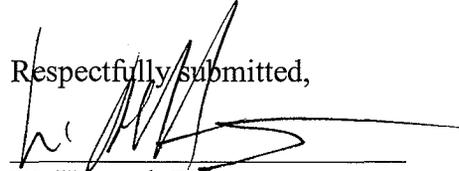
As many have noted, the FCC's transactions review process has become unpredictable, unfocused, and protracted. Most recently, the Commission allowed well over a year to pass before issuing an order approving of a merger of two struggling satellite radio companies. At 400-plus days to review a merger that was found by the antitrust authorities to pose no significant competition concerns, the Commission's transaction review process has moved beyond tragedy and threatens to become farce.

If the Commission is engaged merely in duplicative competition analysis, it should take no longer than the expert antitrust authorities to complete its work. If it is doing more than that, it should clearly explain what precise public interests it is protecting and provide a clear framework for its analysis. It should not, however, allow the transaction review process to become a vehicle for political horse trading or for addressing industry-wide issues. Narrow, transaction-specific analysis of the proposed combination, its competitive effects, consistency with existing Commission rules, and impact on other relevant Commission policies should take no more than the informal 180-day FCC merger review period established in the late 1990s.

The above-referenced applications provide an ideal opportunity to put the Commission's transaction review process back on the right track. As the applicants have demonstrated, the proposed transaction will create a nationwide, open access wireless broadband network in the 2.5 GHz band. The proposed merged entity – New Clearwire – thus would add a new, strong competitor in the broadband (and specifically mobile broadband) market. No party has seriously

questioned that conclusion, and the vast majority of filed comments in this docket support the applications. Based on the record developed and the public benefits that would accrue as a result of proposed combination, the Commission should expeditiously complete its review in this matter and grant the applications without the imposition of extraneous conditions.

Respectfully submitted,



W. Kenneth Ferree

President

The Progress & Freedom Foundation

1444 Eye Street, NW, Suite 500

Washington, DC 20005 |



Barbara S. Esbin

Senior Fellow

The Progress & Freedom Foundation

Center for Communications and

Competition Policy

1444 Eye Street, NW, Suite 500

Washington, DC 20005 |

August 4, 2008