

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations	)	WT Docket No. 08-94 DA 08-1477

**COMMENTS OF THE CATHOLIC TELEVISION NETWORK**

The Catholic Television Network (“CTN”) hereby submits these comments in response to the Petition to Deny filed by AT&T, Inc. in the above-captioned proceeding.<sup>1</sup> AT&T asks the Commission to deny applications filed by Sprint Nextel Corporation (“Sprint”) and Clearwire Corporation (“Clearwire”) to transfer control of their 2.5 GHz licenses and leases to a new wireless broadband company (“New Clearwire”). AT&T argues, in part, that Educational Broadband Service (“EBS”) spectrum leases should be included in a spectrum screen in evaluating the New Clearwire transaction. However, the Commission must consider the unique nature of EBS spectrum and the public interest benefits of excluding EBS spectrum leases from any New Clearwire spectrum screen.

CTN supports the New Clearwire transaction because it will enable EBS licensees to realize the full benefits of broadband deployment in the 2.5 GHz band.<sup>2</sup> AT&T argues that EBS spectrum leases should be included in a spectrum screen because “there appear to be no material distinctions between EBS leases and other commercial mobile leases that are attributed in other

---

<sup>1</sup> Petition to Deny (“Petition”) of AT&T, Inc. (“AT&T”), WT Docket No. 08-94 (July 24, 2008).

<sup>2</sup> See Letter from Catholic Television Network, WT Docket No. 08-94 (July 24, 2008).

contexts.”<sup>3</sup> This is incorrect. There are *significant* differences between EBS leases and other secondary market wireless leases.

First, EBS is the only spectrum specifically set aside for formal education. The Commission’s rules provide that EBS licenses may be issued only to “an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.”<sup>4</sup>

Second, unlike commercial mobile leases, EBS leases are carefully crafted to ensure that EBS licensees can use 2.5 GHz spectrum to further their educational missions. Such leases often provide for the provision of wireless broadband access, video conferencing, and other telecommunications services to meet the changing needs of EBS licensees who frequently play an active, long-term role in the management and use of their spectrum for education. All EBS licensees retain a portion of their spectrum for their exclusive full time use, and some EBS licensees have rights to recapture additional spectrum in order to meet changing educational requirements.

Third, the Commission’s EBS leasing rules are specifically designed to foster the educational use of the spectrum. For example, the rules require that EBS licensees have the right after the first 15 years of a lease, and every 5 years thereafter, to reassess their educational needs

---

<sup>3</sup> Petition at 9.

<sup>4</sup> 47 C.F.R. § 27.1201(a).

in cooperation with their commercial lessees.<sup>5</sup> The rules were adopted to ensure that EBS licensees' educational, technological, and spectrum needs will be met over the long term.<sup>6</sup>

The difference between EBS and commercial mobile leases is exemplified by the fact that there is a special exception for EBS in the Commission's secondary market rules. For all wireless services, *except* EBS and public safety, a spectrum lessee must be eligible to be a licensee in the same service as the lessor.<sup>7</sup> The EBS exception was adopted to maintain the Commission's long-standing policies and rules that permit EBS leasing (which was permitted long before adoption of secondary market rules) in order to support EBS licensees' educational missions.<sup>8</sup>

Given the unique nature of EBS, the inclusion of EBS leases in any spectrum screen of the New Clearwire transaction could have serious negative effects on the educational community. For example, if the Commission were to require New Clearwire to divest some of its EBS holdings in order to complete the transaction, certain educators could lose the benefits of existing lease agreements which are critical in their future educational plans. Unlike purely commercial leases that may easily be sold, EBS leases are uniquely tailored to meet the educational needs of EBS licensees, and may not readily be capable of being assumed by another party.

---

<sup>5</sup> 47 C.F.R. § 27.1214(e).

<sup>6</sup> 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, 5716 (2006).

<sup>7</sup> 47 C.F.R. §1.9030(d)(2).

<sup>8</sup> See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17531 (2004) (Commission extended secondary market rules to EBS but with "certain modifications in order to maintain the educational purposes of [EBS]"; Commission further noted "[T]here are

Based on discussions with Sprint and Clearwire, CTN believes that New Clearwire is committed to building a WiMax network and that leased EBS spectrum will form an important part of that network. All of Sprint's and Clearwire's educational lessors should be given a full opportunity to take advantage of the broadband services and other educational benefits provided under their leases in contemplation of that network buildout.

For the foregoing reasons, the Commission should exclude EBS spectrum leases from any spectrum screen which may be applied, if at all, to the New Clearwire transaction.

Respectfully submitted,

**CATHOLIC TELEVISION NETWORK**

*/s/ Edwin N. Lavergne* \_\_\_\_\_

Edwin N. Lavergne  
Donna A. Balaguer  
Fish & Richardson P.C.  
1425 K Street, N.W.  
11<sup>th</sup> Floor  
Washington, DC 20005  
(202) 783-5070

Its Attorneys

---

unique policies associated with [EBS] licensees' educational purposes, and the services have already developed their own approach to excess capacity leasing.”)