

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
Applications of Sprint Nextel Corp. and	)	
Clearwire Corporation for Consent to	)	WT Docket No. 08-94
Transfer Control of Licenses and	)	
Authorizations	)	
	)	
File Nos. 0003462540, <i>et al.</i>	)	

**OPPOSITION TO PETITIONS TO DENY AND REPLY TO COMMENTS**

Intel Corporation ("Intel")<sup>1</sup>, on behalf of its direct, wholly-owned subsidiary Intel Capital<sup>2</sup>, hereby files this Opposition to the Petitions to Deny filed by AT&T Inc. ("AT&T") and the Rural Cellular Association ("RCA") in the above-captioned proceeding. Intel is a stakeholder in the proposed transaction; it has committed to invest \$1.0 billion in New Clearwire in addition to its previous investments in Clearwire Corporation.<sup>3</sup>

Intel strongly believes that the New Clearwire transaction is in the public interest. Sprint Nextel Corporation ("Sprint") and Clearwire Corporation ("Clearwire," and with Sprint, the "Applicants") have convincingly demonstrated the significant public interest benefits of the transaction.

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<sup>1</sup> Intel, the world leader in silicon innovation, develops technologies, products, and initiatives to continually advance how people work and live. Additional information about Intel is available at [www.intel.com/pressroom](http://www.intel.com/pressroom).

<sup>2</sup> Intel Capital, Intel's global investment organization, makes equity investments in innovative technology start-ups and companies worldwide. Intel Capital invests in a broad range of companies offering hardware, software, and services targeting enterprise, home, mobility, health, consumer Internet, semiconductor manufacturing and cleantech. Since 1991, Intel Capital has invested more than US\$7.5 billion in approximately 1,000 companies in 45 countries. In that timeframe, 168 portfolio companies have gone public on various exchanges around the world and 212 were acquired or participated in a merger. In 2007, Intel Capital invested about US\$639 million in 166 deals with approximately 37 percent of funds invested outside the United States. More information on Intel Capital is available at [www.intelcapital.com](http://www.intelcapital.com).

<sup>3</sup> Pursuant to commercial agreements, "Intel 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 the new company's service in association with Intel's performance notebook PC brand."<sup>3</sup> See Press Release of Sprint and Clearwire, May 7, 2008 ("Transaction Press Release"), available at <http://www.clearwireconnections.com/pr/pressreleases/050708.pdf>.

Moreover, virtually all of the entities that responded to the New Clearwire applications (the "Applications") agreed that the proposed transaction would greatly advance the public interest by accelerating the development of a fourth generation ("4G") mobile wireless broadband network and increasing competition, using historically underemployed spectrum. In view of the increased competition that New Clearwire will bring to the marketplace, subjecting the transaction to the spectrum screen – traditionally applied to protect against undue concentration of wireless providers – is unnecessary and inappropriate. Likewise, New Clearwire will have compelling marketplace incentives to address roaming and interoperability in a manner that enhances consumer welfare without the need to condition the transaction.

### **I. The Record Strongly Supports Expeditious Grant of the New Clearwire Applications**

Intel has long supported marketplace and policy initiatives to make broadband affordable, high-quality, and ubiquitous in the U.S. and around the world. Intel's marketplace initiatives include its investment in WiFi and WiMAX. Intel's policy initiatives include its individual efforts and the efforts of the High Tech Broadband Coalition (of which it was a founding member) advocating policies designed to promote investment and innovation in broadband facilities and services.<sup>4</sup>

New Clearwire represents a real potential to offer an alternative to the established broadband players in the U.S. By combining the 2.5 GHz spectrum under a single entity, New Clearwire will unleash the promise of the 2.5 GHz spectrum on a nationwide basis for the benefit of consumers, businesses, and the educational community. Through its use of transformational open-standard WiMAX technology, New Clearwire will advance the speed and capabilities of today's third generation ("3G") wireless networks. This commercial availability will provide new opportunities for other Commission licensees and wireless network operators, especially those in rural and underserved areas. It will drive customer premises equipment ("CPE") and other device innovation with embedded WiMAX chipsets, which may create new opportunities for small and rural businesses and their consumers. As Intel's President and CEO, Paul Otellini, has stated, "The [New Clearwire] agreement ... signifies growing industry support for WiMAX. Given its flexibility, coverage, and speed, WiMAX will enable the mobile Internet and is already opening doors to a host of new and exciting applications, devices, and business models around the world."<sup>5</sup>

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<sup>4</sup> For instance, Intel supported the Commission's decisions to exempt broadband facilities from the unbundling obligations of the Telecommunications Act of 1996 and its determinations that cable, wireline, and wireless high-speed Internet access should be treated as information services.

<sup>5</sup> Transaction Press Release at 3.

Virtually all other commenters agree that the New Clearwire transaction promises substantial competitive benefits to consumers. They note, for instance, that the transaction will “benefit all Americans by bringing them another competitive broadband alternative to the current incumbent providers.”<sup>6</sup> This new broadband platform will compete with incumbents’ robust wireline and cable broadband networks, as well as advanced wireless broadband networks in the 700 MHz, advanced wireless service (“AWS”), personal communications service (“PCS”), Wireless Communications Service (“WCS”), Mobile Satellite Service/Ancillary Terrestrial Components (“MSS/ATC”), and other bands. New Clearwire will provide an alternative platform that will enhance marketplace competition – leading to lower prices and better service for consumers.

## **II. The FCC Should Not Apply the Spectrum Screen**

While AT&T “does not fundamentally oppose the ... transaction,” it nonetheless suggests that the Commission should apply the spectrum screen to the transaction, but include BRS/EBS spectrum (which is not currently considered in the initial screen).<sup>7</sup> Intel disagrees.<sup>8</sup>

The fundamental issue before the Commission is whether the transaction will enhance competition. Indisputably, it will. New Clearwire will be a new nationwide broadband entrant that competes against wireline and wireless providers, providing consumers with an alternative to the incumbent providers that currently dominate the marketplace. The Commission’s spectrum screen analysis is designed to protect against undue concentration of wireless providers, but that is not a concern here. There can be no serious argument that the introduction of a new competitor facing the formidable challenge of wresting market share from well-established players would somehow increase market concentration.

In any event, it would be inappropriate to simplistically include the BRS/EBS spectrum. As the Applicants demonstrate, the BRS spectrum remains burdened by a licensing scheme that makes it extraordinarily difficult to

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<sup>6</sup> See WT Docket No. 08-94, Letter from Terry Holmes, President, Fortitude Ventures, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed July 18, 2008).

<sup>7</sup> See WT Docket No. 08-94, AT&T Petition to Deny at 2-8, 15 (filed July 24, 2008).

<sup>8</sup> We note that the Commission, in its recent approval of Verizon Wireless’ acquisition of Rural Cellular Corporation, rejected the inclusion of BRS/EBS 2.5 GHz spectrum in the initial spectrum screen. See *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (rel. Aug. 1, 2008) (“Verizon/RCC Order”), at ¶33 (“[W]e still maintain that it is premature to include ... Broadband Radio Service (“BRS”) spectrum in the initial screen...”).

utilize the spectrum to deploy broadband service on a national basis.<sup>9</sup> Likewise, the EBS spectrum is encumbered by numerous and varied spectrum lease agreements that leave lessors with considerable control over the spectrum.<sup>10</sup>

Not surprisingly, the marketplace values BRS/EBS spectrum much differently than the wireless spectrum that has historically been considered in the initial screen. Using an objective \$ per MHz/pop analysis, New Clearwire's spectrum holdings are not even worth one-third of AT&T's 700 MHz licenses. AT&T acquired 700 MHz licenses through the Commission's 700 MHz auction and private market transactions at a weighted average of \$2.04 per MHz/pop.<sup>11</sup> The recently auctioned C block was valued at roughly \$0.70 per MHz/pop.<sup>12</sup> By contrast, in its sale of the 2.5 GHz spectrum to Clearwire, AT&T valued BellSouth's 2.5 GHz spectrum at only \$0.17 per MHz/pop.<sup>13</sup>

As the Applicants have explained, combining the BRS/EBS spectrum in a single entity is necessary to be able to utilize the 2.5 GHz spectrum to deploy a WiMAX network with a national footprint; neither Sprint nor Clearwire could effectively do it alone.<sup>14</sup> Applying the spectrum screen – especially in a manner that precludes more refined aggregation of the relevant spectrum – will undermine the transaction and foreclose its competitive public interest benefits. Intel therefore believes that AT&T's proposed screen analysis is inappropriate and that this transaction will indisputably enhance competition.

### **III. No Roaming or Interoperability Conditions Are Necessary**

As a new entrant facing well-established competitors, New Clearwire will have strong market-based incentives to meet consumers' desires for interoperability, roaming, and other features and services. It is neither

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<sup>9</sup> Application Public Interest Statement at 28-34, 40-47 (*available at <http://www.fcc.gov/transaction/sprint-clearwire.html#appdocs>*) ("Public Interest Statement").

<sup>10</sup> *Id.* at n.78, 51.

<sup>11</sup> This \$2.04 per MHz-pop figure is a weighted average of the price AT&T paid in the 700 MHz auction (\$3.15 per MHz-pop) and the price it paid in acquiring 700 MHz licenses from Aloha Partners in 2007 (\$1.06 per MHz-pop). See Stifel Nicolaus, "Some Further Thoughts on 700 MHz Auction Results," at 1 (Mar. 24, 2008); Stifel Nicolaus, "What the AT&T Purchase of Aloha Spectrum Suggests," at 1 (Oct. 9, 2007).

<sup>12</sup> The total price paid for the C block was \$4.75 billion. See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (2008) at Attachment A, p.63.

<sup>13</sup> AT&T Inc., Quarterly Report (Form 10-Q), at 34 (Aug. 3, 2007). The 2.5 GHz spectrum at issue in the BellSouth/Clearwire transaction covered 1.7 billion MHz-pops, resulting in a valuation of \$0.176 MHz-pops (\$300 million divided by 1.7 billion).

<sup>14</sup> Public Interest Statement at 22-25.

necessary nor prudent for the Commission to compel roaming or interoperability, as suggested by RCA.

Such conditions are unwarranted for several reasons. First, the new company cannot afford to squander its first mover advantage in the provision of 4G wireless services given its existing formidable broadband competitors who intend to offer services using so-called long term evolution (“LTE”) technology. Indeed, New Clearwire has strong marketplace incentives to expand its direct and indirect customer base and otherwise maximize consumer welfare.

Second, starting on day one, new Clearwire will offer non-exclusive wholesale access to its WiMAX network to the founding investors. Thus, each of the stakeholders in the new company can compete aggressively in its own right through its 4G mobile virtual network operator (“MVNO”) agreements with New Clearwire.

Third, imposing roaming or interoperability obligations on New Clearwire – obligations to which its competitors are not subject – would unnecessarily handicap a new entrant and be contrary to longstanding FCC policy. As the Commission has consistently held, regulation is appropriate only in the instance of market failure.<sup>15</sup> Not only is there no failure in the roaming and interoperability markets, but the proposed transaction will actually strengthen the marketplace by introducing a new competitor. Given New Clearwire’s strong marketplace incentives to expand its customer base and otherwise maximize consumer welfare, it is neither necessary nor prudent for the Commission to intervene in the marketplace in this regard.

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<sup>15</sup> *1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, Notice of Proposed Rulemaking, 13 FCC Rcd 25132, ¶ 5 (1998); see also *Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, ¶ 173 (1994).

#### **IV. Conclusion**

The proposed transaction represents a unique opportunity for the Commission to permit the creation a new competitor in the marketplace using underemployed 2.5 GHz spectrum. Intel strongly urges the FCC to approve the transaction expeditiously and without conditions. Prompt Commission approval is an essential condition precedent to infusing New Clearwire with the capital funding necessary to deploy its 2.5 GHz nationwide mobile WiMAX network – and thus ensuring the near-term commercial availability in the U.S. of a new mobile provider to compete with established broadband players.

Respectfully submitted,

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