Before the
Federal Communications Commission
Washington, DC 20554

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

OPPOSITION OF GOOGLE INC.

Pursuant to Section 1.939 of the FCC's Rules, 47 C.F.R. § 1.939, and in accordance with the Commission's June 24, 2008, Public Notice (DA 08-1477), Google Inc., by its attorneys, files this Opposition to AT&T's Petition to Deny in the above-referenced proceeding.[1] Google respectfully submits that a grant of the Sprint-Clearwire applications ("Applications") in this proceeding well-satisfies the Commission's "public interest" standards,[2] and that AT&T's arguments claiming an inadequate public interest showing should be dismissed.

Discussion

Sprint Nextel Corporation and Clearwire Corporation (the "Applicants") have filed fully complete FCC transfer applications that demonstrate beyond serious question the public interest would be well-served by the proposed transfer. New Clearwire holds the promise of a tremendous and much-needed boost to broadband competition in America. The Applicants have agreed to combine their next-generation 2.5 GHz wireless broadband businesses to form a new wireless company to create an advanced mobile WiMAX broadband network. An express and

[1] Petition to Deny of AT&T Inc., WT Docket No. 08-94 (July 24, 2008) ("AT&T Petition").

[2] As described in the Applications, Google is a significant investor in the New Clearwire.

investment-backed goal of New Clearwire is to deliver precisely what the Commission and Congress have been striving for: the emergence of a strong broadband "third pipe" for the American public. If successful, New Clearwire will offer an all-digital, all-broadband wireless alternative to the now-persistent broadband duopoly.[3] Commission approval of this transaction would yield significant benefits for all consumers by forcing today's incumbent broadband providers to compete more vigorously, to lower prices, to raise customer service levels, and to innovate. If they fail to meet this challenge, today's incumbents will face the marketplace consequences as consumers will be able to turn to this new competitive option. New Clearwire plans to extend its wireless broadband network to up to 140 million people in the U.S. by the end of 2010.

Equally important, New Clearwire has agreed not to block, degrade, or impair access, downloading, or utilization of any lawful, non-harmful Internet content, applications, or services on the network. This transformational open network will greatly enhance consumer welfare by stimulating innovation and lowering prices for applications and devices. The open network not only will serve the consumers using it, the New Clearwire also will exert considerable marketplace pressure on other broadband providers to make openness a part of their standard business and engineering practices. This voluntary contractual agreement takes "another important step to ensure that all consumers have unfettered access to the Internet."[4]

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[3] Indeed, New Clearwire will provide an alternative mobile broadband platform that promises to be faster than DSL. New Clearwire seeks to enhance competition in both the wireless broadband market and the larger overall broadband market – leading to lower prices for consumers and enhancing access to affordable broadband service to millions of Americans.

[4] Statement of FCC Chairman Kevin Martin, *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices*, WC Docket No. 07-52 (Aug. 1, 2008).

By contrast, the American public would be ill-served if the regulatory roadblocks erected by those who would prefer to preserve their marketplace positions are permitted to hinder the emergence of a strong broadband "third pipe." Specifically, AT&T would have the Commission establish a new spectrum screen test in the course of this proceeding, and then apply this test to support denial of the Applications as contrary to the "public interest." AT&T's recourse to a Petition to Deny, however, is both substantively improper and anti-competition. The Commission should reject AT&T's arguments and find that the Applications on their face present a full and sufficient public interest showing, consistent with FCC precedent and the substantial demonstrated public policy interests.

Notably, AT&T can cite no authority for the proposition that the FCC's mobile telephony spectrum screen includes holdings in the BRS/EBR spectrum. To the contrary, the Commission includes the BRS/EBR spectrum in a different product market, the *mobile data and fixed broadband* markets.[5] Moreover, as recently as the November 2007 *AT&T-Dobson Order*, the Commission affirmed that BRS/EBR spectrum does not belong in the mobile telephony product market for purposes of the spectrum screen.[6]

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[5] *In the Matter of AT&T Inc. and BellSouth Corporation*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5748 (¶175) (2007) ("Consistent with the Commission's analysis in the *Sprint/Nextel Order*, we assess the potential effects of the proposed BRS and WCS transfers on competition in the product markets where BRS and WCS spectrum seem most likely to be used: (1) the mobile data services market and (2) the fixed broadband services market.")

[6] *Applications of AT&T Inc. and Dobson Communications Corporation*, 22 FCC Rcd 20295, 20308 (¶17) (2007) (*"AT&T-Dobson Order").* Notably, in so ruling, the FCC rejected the same argument that AT&T makes in this proceeding. *See* Joint Opposition of AT&T Inc. and Dobson Communications Corporation, WT Docket No. 07-153, at 3 (Sept. 6, 2007):

> to assess the impact of the merger on the spectrum available for mobile wireless services, the analysis should properly include not only cellular, PCS, SMR and AWS but also other substitutable spectrum, most notably BRS/EBS. Sprint and

Nonetheless, AT&T now argues that "substantial changes in the BRS/EBS service in over eight months since the *AT&T-Dobson Order* was issued warrant reversing this conclusion." AT&T Petition at 4. It offers no legitimate support for the Commission to establish such a wildly vacillating and *ad hoc* standard in this or any other transactional review of a facilities-based broadband new entrant. According to AT&T, the New Clearwire itself is the primary evidence supporting the need for such a change. *Id.*, at 5-6. Aside from the circularity of such reasoning – which proves only that AT&T would prefer if the Applications were dismissed – the proposed entry of New Clearwire is not germane to whether the BRS/EBR spectrum now belongs in the mobile telephony product market. AT&T here claims the Commission should reverse its finding in the November 2007 *AT&T-Dobson Order* because the BRS/EBS spectrum transition is now "substantially different," *id*., at 6, including that the BRS/EBS transition is completed in "54% of the BTAs" in the United States. One glaring problem with AT&T's claim, however, is that this evidence positively *affirms today* the validity of the finding in the *AT&T-Dobson Order* that the BRS/EBS spectrum is not "available on a nationwide basis" for mobile telephony. The Commission's August 1, 2008, *Verizon Wireless-RCC Order* also affirms that approach: "we still maintain that it is premature to include AWS-1 (1710-1755 MHz and 2110-2155 MHz) and Broadband Radio Service ("BRS") spectrum in the initial screen . . . ."[7]

> Clearwire have emerged as the primary commercial holders of the BRS/EBS spectrum . . . .

[7] *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 Wireless-RCC Order*"). *See, also, id.*, ¶47 ("For the proposed Verizon-RCC transaction, we apply the same analysis of the input market for spectrum that we used in the *AT&T-Dobson Order* as part of an initial screen for determining which markets require case-by-case analysis.").

Furthermore, AT&T's argument fails even apart from the proposed new spectrum screen. A spectrum screen is just one tool among others that the Commission can use to evaluate the likely competitive impact of a proposed transaction in the mobile telephony market. AT&T does not, and cannot, dispute that the addition of a potential broadband "third pipe" as proposed by the New Clearwire would greatly enhance competition in mobile communications and would serve the American public. Instead, AT&T states that it "does not fundamentally oppose the underlying [New Clearwire] transactions . . . ." AT&T Petition, at 15. According to AT&T, its concern is that the New Clearwire "is capable of substantially impacting competition in the mobile communications market." *Id.*, at 6. It is understandable that AT&T would feel concerned. This potential competition underscores exactly why this transaction is good for American consumers and businesses, and why the Application is in the "public interest." As the Commission noted in the *AT&T-Dobson Order*, "the public interest evaluation necessarily encompasses the 'broad aims of the Communications Act,' which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, [and] accelerating private sector deployment of advanced services . . ."[8]

Conclusion

For the foregoing reasons, Google respectfully asks the Commission to deny the AT&T Petition to Deny, and grant the Applications as fully consistent with the public interest. If New Clearwire ultimately is successful, it will be a significant step in ensuring the United States will

[8] *AT&T-Dobson Order*, 22 FCC Rcd at 20303 (¶ 12).

emerge as the unquestioned world leader in broadband penetration, pricing, innovation, and choice. Meeting this challenge requires a swift kick-in-the-competition.

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