

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

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

**CONSOLIDATED OPPOSITION TO PETITIONS TO DENY
OF HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK, INC.**

HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK, INC.

Rudolph J. Geist
Eric E. Menge
Clare C. Liedquist
RJGLaw LLC
7910 Woodmont Avenue
Suite 1400
Bethesda, MD 20814
(240) 821-9850
Its Attorneys

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SUMMARY

Hispanic Information and Telecommunications Network, Inc (“HITN”) hereby submits this Opposition to the *Petitions to Deny* filed by AT&T Inc. (“AT&T”) and the Rural Cellular Association (“RCA”) in response to a series of applications (“Applications”) filed by Clearwire Corporation and Sprint Nextel Corporation seeking approval by the Federal Communications Commission (“FCC” or “Commission”) of the transfer of control of licenses, authorizations, and *de facto* transfer spectrum leases held by Sprint and Clearwire to a new wireless broadband company called Clearwire Corporation (“New Clearwire”). As an Educational Broadband Service (“EBS”) licensee who has entered into agreements to lease its excess capacity to Clearwire or Sprint for almost all of its 84 licenses, HITN is an interested party and has standing to file this opposition.

AT&T (along with its predecessors) has maintained dominance in the wireless and wireline industries for decades and promises to extend that dominance into the future. AT&T’s Petition to Deny of the Sprint-Clearwire Transfer of Control is just another anti-competitive move to keep competition out of its near duopoly wireless broadband market. The Commission should see this attempt for what it is and dismiss the Petition to Deny. RCA’s Petition should also be dismissed as RCA has no standing to file and its demands are contrary to the public interest.

The Commission uses an initial spectrum screen to identify transactions that should be subject to further case-by-case review. The Commission has repeatedly excluded Broadband Radio Service (“BRS”) spectrum from the screen as it is unavailable on a nationwide basis, is currently committed to other uses that preclude use for mobile telephony, and is unlikely to be widely available for deployment in the near term. Despite AT&T’s allegations, BRS and EBS

have not substantially changed since the Commission's recent decisions – service using BRS/EBS is still unavailable on a nationwide basis and the 2.5 GHz transition remains ongoing. The addition of BRS and EBS to the initial spectrum screen is premature, and the Commission's reasoning for excluding these services is still valid.

Even if the Commission finds that the Applications are identified for competitive review by the initial spectrum screen, the Applications are in the public interest and should be granted. Neither Sprint nor Clearwire would alone have the resources necessary to build and operate a nationwide mobile wireless broadband service. Approval of the transfer would reduce duplication of facilities, while minimizing the number of adjacent service area boundaries that require resource-intensive coordination, resulting in faster deployment, greater coverage, less regulatory burden on the Commission, and decreased costs. Absent approval, substantial portions of BRS and EBS spectrum may continue to lay fallow, a detriment to EBS licensees and the public in general as both will be deprived of competitive, advanced wireless services. Grant of the Applications is crucial for an increase in competition in the near duopoly wireless broadband market.

On behalf of the educational, non-profit, and minority communities, HITN urges the Commission to process and grant the Applications expeditiously. The longer the regulatory process takes, the longer deployment of competitive wireless broadband services will be delayed and the longer consumers will either be forced to pay near duopoly prices or be deprived of wireless broadband services altogether.

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**CONSOLIDATED OPPOSITION TO PETITIONS TO DENY
OF HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK, INC.**

Pursuant to Section 1.939(f) of the Commission’s rules,¹ Hispanic Information and Telecommunications Network, Inc (“HITN”) hereby submits this Opposition to the *Petitions to Deny* filed by AT&T Inc. (“AT&T”)² and the Rural Cellular Association (“RCA”)³ (collectively “Petitions”) in response to a series of applications (“Applications”) filed by Clearwire Corporation (“Clearwire”) and Sprint Nextel Corporation (“Sprint”) seeking approval by the Federal Communications Commission (“FCC” or “Commission”) of the transfer of control of licenses, authorizations, and *de facto* transfer spectrum leases held by Sprint and Clearwire to a new wireless broadband company called Clearwire Corporation (“New Clearwire”).⁴ The

¹ 47 C.F.R. §1.939(f)(2007).

² *Petition to Deny* of AT&T Inc. in WT Dkt. No. 08-94 (July 24, 2008)(“AT&T Petition”).

³ *Petition to Deny* of the Rural Cellular Association in WT Dkt. No. 08-94 (July 24, 2008)(“RCA Petition”).

⁴ Applications of Sprint Nextel Corp., Transferor, Clearwire Corp., Transferor, and New Clearwire Corp., Transferee, for consent to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, *Description of the Transaction and Public Interest Statement*, WT Dkt. No. 08-94, Lead File No. 0003368272, (amended June 24, 2008)(“Public Interest Statement”).

Petitions are thinly veiled attempts to thwart competition or extract concessions by opposing Applications that will increase competition in the advanced mobile wireless broadband market, provide significant benefits to educational entities, and are in the public interest. HITN urges the Commission to dismiss the Petitions and grant the Applications in an expeditious manner.

I. Background and Standing

Founded in 1981, HITN is a not-for-profit 501(c) corporation whose mission is to promote educational opportunities for Hispanic Americans through multiple media outlets and telecommunications services. HITN holds 84 station authorizations in the Educational Broadband Service (“EBS”) for facilities throughout the United States and Puerto Rico and is the largest holder of EBS licenses in the United States. In 1987, and because of its national position in EBS,⁵ HITN formed HITN-TV, the first and only independent 24-hour-a-day Spanish language public interest television channel in the United States. Today, HITN-TV is carried by DirecTV, Dish Network, Comcast Cable, Time Warner Cable, and Charter Communications and is presently available in over 30 million U.S. households. Tomorrow, HITN-TV will be a mobile wireless broadband content service available nationwide over the New Clearwire WiMAX network. HITN remains the first and only non-profit Latino managed and controlled public interest television network offering educational content to the nation’s largest minority group and to all who share an interest in Hispanic news, information, and culture.

HITN is an interested party in this proceeding and has standing to file an opposition to the Petitions.⁶ It holds 84 EBS licensees and has entered into agreements to lease its excess

⁵ Formerly Instructional Television Fixed Service (“ITFS”).

⁶ 47 C.F.R. §1.939(f)(2007)(“The applicant and any other interested party may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.”).

capacity to Clearwire or Sprint for almost all of these licenses. As discussed in HITN's earlier comments supporting the transfer, HITN intends to use its educational reservation to make available a new nationwide WiMAX service to minorities, and, in particular, to Hispanics.⁷ The Petitions seek to block the transfer of the licenses to New Clearwire, which is a necessary step to the creation of a viable wireless mobile broadband company capable of deploying service using EBS licenses and providing payments and wireless services to educators. The relief sought by the Petitions greatly impact HITN's EBS licenses, contractual obligations, and future services, making HITN an interested party to the proceeding.

II. AT&T's Only Interest in Filing Is to Thwart Further Competition to its Near Duopoly Broadband Market.

In evaluating whether a transfer of control serves the public interest, convenience, and necessity, the Commission considers whether the "merger will reduce existing competition," and in particular, whether it will accelerate the decline of market power by dominant firms in the relevant communications markets."⁸ The Commission can easily see that grant of the Applications will increase competition rather than decrease it by the simple fact that AT&T, "the nation's largest telecommunications company," opposes the Applications.⁹ For AT&T, the ultimate dominant firm, to even consider the New Clearwire a competitive threat is a boon to the wireless industry, an industry recently cited by the Rural Telecommunications Group, Inc. as

⁷ Comments of Hispanic Information and Telecommunications Network, Inc. in WT Dkt. No. 08-94 (July 24, 2008)("HITN Letter of Support").

⁸ See *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket 04-70, FCC 04-255 at para. 42 (rel. October 26, 2004).

⁹ See *Washington Post, AT&T Profit Climbs 30%, Helping Shares* (July 24, 2008), accessible at <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/23/AR2008072303461.html> (last visited August 4, 2008)(describing AT&T as the nation's largest telecommunications company).

desperately in need of competition.¹⁰ At year-end 2007, AT&T boasted itself as being “the largest telecom company in the world based on revenue with more than 100 million customers;” the number one wireless provider in the U.S., with 70.1 million customers; and the number one broadband provider in the U.S. with more than 14 million customers.¹¹ The company (along with its predecessors) has maintained dominance in the wireless and wireline industries for decades, and promises to do so in the near future as it has successfully bid on one of the two largest footprints of 700 MHz spectrum.¹² In order for New Clearwire, or the 2.5 GHz spectrum band in general for that matter, to even have a chance of competing against this entrenched incumbent, the Commission must grant the Applications as expeditiously as possible.

In fact, the likely reason AT&T filed a petition to deny the New Clearwire transfer of control is because it fears loss of its near duopoly status with Verizon Wireless. AT&T has a long history of anti-competitive conduct and its recent Petition to Deny the Sprint-Clearwire Transfer of Control is just another anti-competitive move. For example, in the recent M2Z Networks proceeding, AT&T threatened not to deploy broadband in rural areas if the Commission allowed another competitor into its near duopoly broadband market:

It is possible the proposal may have the affect of discouraging the provision of advanced services in rural areas. A company may be willing to roll-out advanced services in less-populated rural areas if there are no broadband options available. If free, basic service is promised or made available by M2Z as a result of its

¹⁰ See In the Matter of Rural Telecommunications Group, Inc., *Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, RM No. ____ (July 16, 2008) (“RTG Petition”).

¹¹ AT&T.com, *AT&T 2007 Accomplishments*, accessible at <http://www.att.com/gen/press-room?pid=1728> (last visited Aug. 4, 2008).

¹² See Auction of 700 MHz Band Licenses Closes, *Public Notice*, DA 08-595 at Attachment B (March 20, 2007) (AT&T’s winning 700 MHz bid amounted to 6,636,658,000 dollars, second highest only to Verizon Wireless).

subsidized spectrum grant, there would be less incentive to expend the resources necessary to roll-out more services, resulting in less competition.¹³

AT&T has also boxed out competitors in the cellular industry by entering exclusive, and what some members of Congress have criticized as anticompetitive, contracts with Apple.¹⁴ Should the Commission grant the Applications and bring a third competitor into the wireless broadband market, AT&T will be forced to spend its resources on innovation rather than lobbying fees paid to secure its market dominance.¹⁵

III. Addition of BRS/EBS to the Initial Spectrum Screen Is Premature.

In its petition, AT&T insists the Commission must conduct a competitive review of the proposed transaction as the Applications would cause New Clearwire to exceed the initial spectrum screen which the Commission uses to identify transactions that should be subject to further case-by-case review.¹⁶ To justify this claim, AT&T asks the Commission to vary from very recent precedent and include Broadband Radio Service (“BRS”) and EBS spectrum in the

¹³ See *Petition to Deny* of AT&T, Inc to M2Z Networks, Inc. Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band, WT Dkt. No. 07-16, at 19 (March 2, 2007).

¹⁴ See CNet.com, *Democrats Criticize AT&T's Exclusive iPhone deal* (July 11, 2007), accessible at http://news.cnet.com/8301-10784_3-9742441-7.html (last visited Aug. 4, 2008)(describing congressional complaints of AT&T’s exclusive right to carry Apple’s iPhone).

¹⁵ See Salon.com, *How Telecoms Are Attempting to Buy Amnesty from Congress*, available at <http://www.salon.com/opinion/greenwald/2008/05/24/telecoms/> (last visited Aug. 4, 2008); see also, Center for Public Integrity, *Bells vs. AT&T: Telephone Companies Spend Hundreds of Millions to Influence Policy*, available at <http://projects.publicintegrity.org/telecom/report.aspx?aid=408> (last visited Aug. 4, 2008); and see also SavetheInternet.com, *Telco Lobby Attempts to Slow Cook Congress*, available at <http://www.savetheinternet.com/blog/2006/06/01/telco-lobby-attempts-to-slow-cook-congress/> (last visited Aug. 4, 2008).

¹⁶ AT&T Petition at 1-2.

initial screen.¹⁷ Aside from the simple fact that educational spectrum is not commercial spectrum and should not be counted toward commercial spectrum caps, addition of any of the 2.5 GHz spectrum to the initial spectrum screen is premature, and the Commission's reasoning for excluding the BRS (and EBS) is still valid.

Only eight months ago and affirmed just last week, the Commission determined to exclude BRS spectrum from the initial spectrum screen as it is unavailable on a nationwide basis, the spectrum is currently committed to other uses that preclude use for mobile telephony, and it is unclear if the spectrum will be available in the near term.¹⁸ In addition, the Commission found that the ongoing transition process "while well advanced, is not complete, and is by its nature local."¹⁹ Notwithstanding current Commission policy, AT&T wishes to vary from precedent, and hold the Applications to new standards. AT&T claims that substantial changes warrant inclusion of BRS/EBS spectrum.²⁰ AT&T's justifications for overturning Commission precedent is (1) the Applications somehow instantly make wireless service on BRS/EBS viable and imminent,²¹ (2) the success of Sprint and Clearwire in managing the transition,²² and (3) that

¹⁷ *Id.* at 2-4.

¹⁸ See In the Matter of Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, WT Dkt. 07-153, FCC 07-196, para. 32 (2007) ("AT&T-Dobson Order"); see also In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, *Memorandum Opinion and Order and Declaratory Ruling*, WT Dkt. 07-208, FCC 08-181 (2007) ("Verizon-RCC Order").

¹⁹ AT&T-Dobson Order, para 34.

²⁰ AT&T Petition at 4.

²¹ *Id.* at 5-6.

²² AT&T Petition at 6-7.

it is arbitrary to include 700 MHz from the spectrum screen and not BRS/EBS.²³ Despite AT&T's allegations, nothing has changed in those eight months since the AT&T-Dobson Order was released – service using BRS/EBS is still unavailable on a nationwide basis and the BRS transition remains ongoing.

A. Filing of the Application Does Not Alter Status of 2.5 GHz.

Contrary to AT&T's assertion, the act of filing the Applications does not suddenly cause BRS and EBS to become more viable.²⁴ The Applications facilitate deployment and will give New Clearwire the funding it needs to build an advanced wireless mobile broadband network, but the transfer does not in itself alter the availability of spectrum. Services utilizing BRS and EBS are still not available on a nationwide basis. AT&T identifies the three metropolitan markets where Sprint's Xohm division has "soft launched" WiMAX service,²⁵ but Xohm has not announced any further markets where it intends to offer service. Clearwire, meanwhile, has only rolled out service in selected cities in 16 states²⁶ and, for example, is only using 8 of HITN's 84 licenses to provide pre-WiMAX wireless broadband service.²⁷ Clearwire has not announced the introduction of WiMAX services in any new cities since December 2007 due to the lack of

²³ *Id.* at 7.

²⁴ *Id.* at 5.

²⁵ *Id.*; see also Telecoms.com, *Xohm WiMAX to Go Live in September, Says Sprint CTO*, accessible at <http://www.telecoms.com/itmgcontent/tcoms/news/articles/20017544080.html> (last visited Aug. 4, 2008). The three markets are Baltimore, Washington, DC, and Chicago. Full commercial service will not be available until later this year.

²⁶ See Clearwire.com, *Interactive Coverage Map*, accessible at http://www.clearwire.com/store/service_areas.php (last visited Aug. 4, 2008).

²⁷ Corpus Christi, TX (WLX249), Dayton, Ohio (WLX375), Jacksonville, FL (WLX538), Nashville, TN (WLX684), Raleigh, NC (WQCQ718), Seattle, WA (WHT657), Syracuse, NY (WLX682), Wenatchee, WA (WQCI715).

national footprint and funding.²⁸ While WiMAX is a viable technology, the markets where the 2.5 GHz spectrum is being used to provide any service are few and far apart, restricting BRS and EBS nationwide availability.

B. Transition Is Still Ongoing.

While the transition has made substantial progress, it is still not complete. Sprint and Clearwire have been dutifully acting as proponents and have transitioned many of the largest markets in the nation. However, the process is still ongoing and there are many markets in the nation, particularly in rural areas, that still need to be transitioned.²⁹ Even if complete, the state of the transition does not mean that BRS and EBS are available for wireless. The transition is simply a procedural process for the Commission to reband the service. In the vast majority of markets where the transition has been completed, service simply is not available due to lack of facilities or existing operations and will not be until New Clearwire deploys services over the coming years.

C. 2.5 GHz Is Significantly Different than 700 MHz.

In the AT&T-Dobson Order, the Commission included 700 MHz spectrum in the initial spectrum screen given its availability and suitability on a nationwide basis for the provision of mobile telephony services.”³⁰ 700 MHz spectrum is licensed using Cellular Market Areas, Economic Areas, Regional Economic Area Groupings, and nationwide. As the Commission

²⁸ See Clearwire.com, *Clearwire Launches in Rochester, Its 50th Market*, accessible at <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1087799&highlight> (last visited Aug. 4, 2008).

²⁹ Out of HITN’s 84 EBS licenses, 35 have not been transitioned.

³⁰ AT&T-Dobson Order, para. 17.

noted, 700 MHz spectrum not only is technically capable of supporting mobile services, but also is in many respects ideally suited for the provision of these services.³¹

BRS and EBS have radically different properties and regulatory history than 700 MHz that makes it easily distinguishable. While 700 MHz is a new service designed from the beginning for mobile telephony, BRS and EBS have a long and troubled history.³² The services have historically underperformed expectations, and EBS in particular has been underutilized. The Commission has reconfigured the band to invigorate EBS operations. While successful, BRS and EBS are subject to a number of regulations that limit its effectiveness for mobile services.

The Applications present a thorough discussion of the technical restrictions placed on BRS and EBS services that HITN will not repeat here.³³ In addition to these technical restrictions, the majority of the BRS/EBS spectrum can only be licensed to EBS-eligible entities, which are not commercial, nor is the EBS commercial spectrum. Any mobile broadband operator, such as New Clearwire, who wishes to use this service must lease the spectrum from educational, non-profit entities, who will require lease payments, a portion of the capacity of the service set aside for their use, and many concessions from the operator. HITN, for example, intends to use its reservation to create a nationwide WiMAX service that furthers its goal of promoting educational opportunities for Hispanic Americans and other minorities. Licensees of

³¹ *Id.*, para. 31.

³² In the Matter of 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*, WT Dkt. No. 03-66, FCC 04-135 (rel. July 29, 2008) (Separate statement of Commissioner Adelstein: “[i]t is no secret that BRS and ITFS have had a tortured regulatory history”).

³³ Public Interest Statement at 30-34.

the 700 MHz band do not have to contend with educational licensees or the technical limitations; and the spectrum to which they are licensed is exclusively commercial – as is all spectrum that is to be considered as part of the spectrum cap.

As a further difference, licensing in BRS and EBS has grown in a convoluted manner since the creation of ITFS in 1963. BTAs were overlaid on the numerous small, irregularly shaped license areas of incumbents. The resulting patchwork requires any nationwide operator such as New Clearwire to piece its service together like a jigsaw puzzle and include numerous overlaps to ensure adequate coverage. In addition, the poor propagation characteristics of 2.5 GHz require an operator to construct more infrastructure to provide the same level of coverage as a licensee in a lower band, such as 700 MHz.³⁴

AT&T points out that 700 MHz was included in the initial spectrum screen before the service had been auctioned.³⁵ Auctioning of the remaining BRS and EBS white space is even more removed than this. At the time of the AT&T-Dobson Order, the 700 MHz auction had been scheduled and auction procedures announced.³⁶ Here, the Commission has just determined that it would auction off BRS white space but has not scheduled the auction.³⁷ EBS, which constitutes a majority of the spectrum in 2.5 GHz, is even further behind, as the Commission is

³⁴ *Id.* at 47.

³⁵ AT&T Petition at 7.

³⁶ AT&T-Dobson Order, para 31.

³⁷ In the Matter of 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*, WT Dkt. No. 03-66, FCC 08-83, paras. 17-20 (rel. March 20, 2008).

seeking additional comment on whether or not to auction EBS white space.³⁸ Until the Commission schedules the auctions for BRS and EBS white space, large segments of the spectrum will continue to be unavailable and service cannot be provided nationwide.

Additional evidence that the BRS and EBS should not be considered as part of the initial spectrum screen at this time comes from a third party. The Rural Telecommunications Group (“RTG”) filed a Petition for Rulemaking just a few weeks ago, asking for the Commission to initiate a rulemaking to consider the adoption of a spectrum cap.³⁹ HITN makes no comment regarding the merits of this request, but it is pertinent to this discussion that RTG specifically excluded BRS and EBS from its requested spectrum cap. RTG described the BRS as encumbered spectrum, and “[a]ccordingly, because they will not be used to provide competitive high mobility wireless services in the foreseeable future, there is no reason at this time to subject such licenses to the cap.”⁴⁰

BRS and EBS have not substantially changed in the past eight months since the release of the AT&T-Dobson Order or the week since the Verizon-RCC Order, and considering these services in the initial spectrum screen is premature at this time. In two or three years when the transition is complete, if service on the spectrum is available nationwide, and the white space auctions are complete, it may be more appropriate to include BRS and EBS in the initial spectrum screen.

³⁸ *Id.*, paras. 181-204.

³⁹ RTG Petition at 6.

⁴⁰ *Id.*

IV. RCA Lacks Standing to File a Petition to Deny.

In its petition, RCA spends a significant amount of time justifying that it has standing to file a petition to deny of the Applications,⁴¹ but its arguments are unpersuasive. The RCA and its member companies had every opportunity to acquire BRS spectrum or lease EBS spectrum, both of which were widely available over the past two decades leading up to the Sprint Clearwire deal, and they have not. If many of RCA's member companies were actually licensees or lessees of 2.5 GHz spectrum, they may have standing to claim they should be able to get roaming so that their "WiMAX" customers on 2.5 GHz spectrum can get service when roaming on the Clearwire network. However, they have never pursued 2.5 GHz spectrum and there is no feasible reason to force New Clearwire, a market entrant which is trying to create national competition against a duopoly as it is, to expend the substantial resources that will surely be required to adapt its 2.5 GHz network to accommodate roaming with multi-mode rural provider networks⁴² operating on other frequencies and with providers who had no interest in the evolution of the 2.5 GHz band before a new competitive threat emerged. The Commission should dismiss RCA's petition for lack of standing. In the alternative, RCA's claims should be dismissed as grossly contrary to the public interest.

V. Applications Are in the Public Interest and Should Be Granted.

Even if the Commission finds that the Applications are identified for competitive review by the initial spectrum screen, the Applications are in the public interest and should be granted. In previous reviews, the Commission has found that a horizontal merger is unlikely to create or enhance market power unless the transaction significantly increases concentration and would

⁴¹ RCA Petition at 1-6.

⁴² Many rural wireless providers are also the local wireline incumbent telephone company and enjoy a monopoly in their local service area.

result in a concentrated market. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis.⁴³ A fundamental tenet of the Commission's public interest review is that if the transaction creates significant market power, it must have a significant offsetting efficiencies or other public interest benefits.⁴⁴

The Application will not significantly increase concentration or result in a concentrated market. Instead, the opposite will be the case. As HITN discussed in its comments supporting the Applications, the resulting company, New Clearwire, would have the spectrum resources and the financial support needed to compete with other mobile wireless broadband providers.⁴⁵ Without this approval, neither Sprint nor Clearwire would have the resources necessary to build and operate a nationwide mobile wireless broadband service. Substantial portions of BRS and EBS spectrum may continue to lay fallow and the public would receive less service. The transfer would reduce duplication of facilities, while minimizing the number of adjacent service area boundaries that require resource-intensive coordination, resulting in faster deployment, greater coverage, less regulatory burden on the Commission, and decreased costs. Therefore, grant of the Applications is crucial for an increase in competition in the wireless broadband market.

The Applications also provide significant offsetting efficiencies and public interest benefits. EBS was created to assist educators and non-profit educational interests in pursuing their educational goals. Approximately 90 EBS licenses, including HITN, filed their unequivocal support of the Applications. That so many parties voiced their opinions is clear

⁴³ AT&T-Dobson Order, para. 16.

⁴⁴ *Id.*, para. 15.

⁴⁵ HITN Letter of Support at 5.

evidence of the importance of this transfer to educators considering most EBS licensees are educational institutions and the filing date for the comments in this proceeding was in the middle of their summer vacation.⁴⁶ Educational licensees have suffered through four decades of false starts, failed regulatory schemes, a service plagued by bankruptcies, and then a rebanding of the service from wireless cable to wireless broadband. EBS licensees have waited patiently for something productive to be done with this spectrum and New Clearwire will be the fulfillment of that expectation.

Without an active service that is competitively viable, educational entities will not achieve the best use of their educational reservation pursuant to EBS leases and the associated educational services may not be offered to the public. For example, HITN intends to use this reservation to create a nationwide WiMAX service that furthers its goal of promoting educational opportunities for Hispanic Americans and other minorities. If the Applications are denied, the service will be significantly delayed if it happens at all, deferring needed educational services to minorities. For these reasons, the Applications provide significant public interest benefits and should be granted in an expeditious manner.

VI. Time Is of the Essence and the Commission Should Grant Applications Quickly.

To secure new wireless competition, the Commission must take steps to grant the Applications promptly so that New Clearwire can get a foothold before AT&T and other large incumbent wireless carriers begin deploying 700MHz systems to enhance their already

⁴⁶ The Commission recently extended the deadline for comments in response to a notice of proposed rulemaking seeking comment from educators on the appropriate way to allocate remaining EBS white space, because educators are currently in their summer break. In the Matter of 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*, WT Dkt. No. 03-66, DA 08-1523 (rel. June 26, 2008).

stronghold in the broadband market. As the telecommunications trade press has indicated, AT&T's petition may only be a competitor's ploy to slow the regulatory process and squash WiMAX before it even has a chance to compete with AT&T's and Verizon's proposed 4G networks.⁴⁷ The longer the regulatory process takes, the longer deployment of competitive wireless broadband services is delayed and the longer consumers are either forced to pay near duopoly prices or deprived of wireless broadband services altogether.

Most importantly, EBS licensees (and HITN in particular, as New Clearwire's single largest EBS partner) are directly disadvantaged by a long regulatory process. The lease agreements between Clearwire or Sprint and many EBS licensees provide for advanced wireless services for educational usage once the network is built and, for many licensees, lease payments are contingent on build-out. A delay in the regulatory process will delay these educational and non-profit entities access to much needed advanced wireless services and in some cases lease payments. Upon grant of the Applications and build-out of its nationwide WiMAX service, HITN will have access to a branded non-profit WiMAX network to serve community based organizations nationwide that cater to the educational and cultural needs of our nation's largest minority populations. HITN will also be able to serve the larger educational and non-profit communities. Any delay in processing the Applications will be prejudicial to minority access to advanced telecommunications, which is contrary to the public interest and in direct contradiction to the Commission's current efforts to address helping minorities gain additional access in

⁴⁷ See, e.g.s, Ars Technica, *WiMAX Phobia? AT&T Tries to Block Clearwire/Xohm Merger*, accessible at <http://arstechnica.com/news.ars/post/20080725-wimax-phobia-att-tries-to-block-clearwirexohm-merger.html> (last visited Aug. 4, 2008); CNet.com, *AT&T Threatens WiMAX Joint Venture*, accessible at http://news.cnet.com/8301-1035_3-10000105-94.html?tag=nefd.top (last visited Aug. 4, 2008); SFGate.com, The Tech Chronicles, *FCC Watch: Comcast Ruling Coming, AT&T vs. Sprint*, accessible at http://www.sfgate.com/cgi-bin/blogs/sfgate/detail?blogid=19&entry_id=28578 (last visited Aug. 4, 2008).

telecommunications.⁴⁸ On behalf of the educational, non-profit, and minority communities, HITN urges the Commission to process and grant the Applications expeditiously.

VII. Conclusion.

HITN implores the Commission to grant the Applications expeditiously as they are overwhelmingly in the public interest, convenience, and necessity. The New Clearwire will provide desperately needed educational, non-profit, and minority access to advanced wireless services and a third competitor to the duopolistic broadband wireless market. RCA's Petition should also be dismissed as RCA has no standing to file and its demands are contrary to the public interest.

AT&T's argument to include BRS and EBS in the initial spectrum screen should be rejected as it is simply another anti-competitive ploy to squash or slow competition in the broadband market. The Commission has repeatedly and recently declined to include BRS in the initial spectrum screen, and EBS is not a commercial service. The time is not yet ripe to include BRS and EBS in the initial spectrum screen as the transition is not complete, there is no nationwide service on the spectrum, and the whitespace auction has not yet occurred. Even if the Commission decided to include EBS and BRS in the spectrum screen prematurely, the overwhelming need for a new mobile wireless broadband competitor, the benefits to the educational, non-profit, and minority communities, and advancement of the 2.5 GHz spectrum demand approval of the Applications expeditiously.

⁴⁸ See *In the Matter of Promoting Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rule Making*, MB Dkt. No. 07-294, FCC 07-217 (rel. March 5, 2008).

Respectfully submitted,

HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK, INC.

By: 

Rudolph J. Geist
Eric E. Menge
Clare C. Liedquist
RJGLaw LLC
7910 Woodmont Avenue
Suite 1400
Bethesda, MD 20814
(240) 821-9850
Its Attorneys

August 4, 2008

DECLARATION OF RUDOLPH J. GEIST

I, Rudolph J. Geist, counsel to Hispanic Information and Telecommunications Network, Inc., declare under penalty of perjury that I have reviewed the foregoing Consolidated Opposition to Petitions to Deny, and to the best of my knowledge and information, the facts stated therein are correct in all respects.

Executed on August 4, 2008.



Rudolph J. Geist
RJGLaw LLC

Counsel for Hispanic Information and
Telecommunications Network, Inc.

CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing *Consolidated Opposition to Petitions to Deny of Hispanic Information and Telecommunications Network, Inc.* were served this 4th day of August, 2008 on the following parties via electronic mail, unless otherwise noted, at the following addresses:

Aaron Goldberger
Office of Chairman Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, DC 20554
Aaron.Goldberger@fcc.gov

Bruce Gottlieb
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, DC 20554
Bruce.Gottlieb@fcc.gov

Scott Bergmann
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, DC 20554
Scott.Bergmann@fcc.gov

Wayne Leighton
Office of Commissioner Tate
Federal Communications Commission
445 12th Street, S.W. 8-A204
Washington, DC 20554
Wayne.Leighton@fcc.gov

Angela Giancarlo
Office of Commissioner McDowell
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, DC 20554
Angela.Giancarlo@fcc.gov

Blaise Scinto
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Blaise.Scinto@fcc.gov

John Schauble
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
John.Schauble@fcc.gov

James Schlichting
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Jim.Schlichting@fcc.gov

Christopher Moore
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Chris.Moore@fcc.gov

Joel Taubenblatt
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Joel.Taubenblatt@fcc.gov

Lynn Ratnavale
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Lynn.Ratnavale@fcc.gov

Susan Singer
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Susan.Singer@fcc.gov

*Via First Class Mail

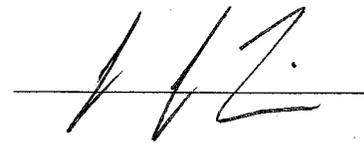
Neil Dellar
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Neil.Dellar@fcc.gov

Gloria Conway
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Gloria.Conway@fcc.gov

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, S.W., Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Paul Mancini*
Gary Phillips
Michael Goggin
AT&T Inc.
1120 20th Street, NW
Washington, DC 20036

David Nace*
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Blvd., Ste. 1500
McLean, VA 22102

A handwritten signature in black ink, appearing to be 'J. Z.', written over a horizontal line.

*Via First Class Mail