

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

|  |   |                     |
|--|---|---------------------|
| In re Applications of                        | ) |                     |
|  | ) |                     |
| SPRINT NEXTEL CORPORATION and                | ) | WT Docket No. 08-94 |
| CLEARWIRE CORPORATION                        | ) | DA 08-1477          |
|  | ) |                     |
| For Consent to Transfer Control of Licenses, | ) |                     |
| Authorizations, and <i>De Facto</i> Transfer | ) |                     |
| Spectrum Leases                              | ) |                     |

**REPLY TO OPPOSITIONS**

Rural Cellular Association (“RCA”) hereby replies to oppositions filed by Sprint Nextel Corporation and Clearwire Corporation,<sup>1</sup> and by Hispanic Information and Telecommunications Network, Inc.<sup>2</sup> (“HITN”) in connection with the above-captioned applications of Sprint Nextel Corporation (“Sprint”) and Clearwire Corporation (“Clearwire”) (jointly the “Applicants”) for the Commission’s consent to the transfer control of Applicants’ 2.5 GHz licenses and lease arrangements to a new wireless broadband company to be called Clearwire Corporation (“New Clearwire”). In support this reply, the following is respectfully submitted:

**I. Response to the HITN Opposition**

HITN quarrels over RCA’s showing of standing to file a petition to deny, suggesting that it is necessary for RCA or its member companies to hold licenses in the Broadband Radio Service (“BRS”) or leases for Educational Broadband Service (“EBS”) spectrum in order for

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<sup>1</sup> See, “Joint Opposition to Petitions to Deny and Reply to Comments” filed August 4, 2008 on behalf of Sprint Nextel Corporation and Clearwire Corporation (“Sprint-Clearwire Opposition”).

<sup>2</sup> See, “Consolidated Opposition to Petitions to Deny of Hispanic Information and Telecommunications Network, Inc.” filed August 4, 2008 (“HITN Opposition”).

RCA to be deemed a party with standing to file a petition.<sup>3</sup> HITN's argument is not supported by legal analysis or relevant authority. HITN fails to recognize that RCA members will compete directly with New Clearwire and its affiliate, Sprint, through their offerings of wireless broadband services on spectrum licensed by the Commission in other frequency bands.

RCA demonstrated in its petition that it has representational standing to petition to deny the New Clearwire merger application because at least one of its members can show independently that it is a party in interest with respect to the application under § 309(d)(1) of the Communications Act of 1934, as amended. RCA member, Cellular South, Inc. ("Cellular South"), was named in the petition as an example of a company that will be economically aggrieved if the Commission grants the applications. Cellular South's status as a potential competitor to New Clearwire provides it with standing, and RCA with representational standing, to file a petition to deny the transfer of control application under *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940) and its progeny. As RCA's petition explained, consistent with *Sanders Brothers*, the Commission developed a "generous" standing policy in assignment and transfer cases "so as to enable a competitor to bring to the Commission's attention matters bearing on the public interest because its position qualifies it in a special manner to advance such matters." *Stoner Broadcasting System, Inc.*, 74 F.C.C. 2d 547, 548 (1979). See *WLVA, Inc. v. FCC*, 459 F.2d 1286, 1298 n.36 (D.C. Cir. 1972) (standing under § 309(d)(1) "liberally conferred" where a competitor alleges economic injury).<sup>4</sup>

Aside from HITN's claim that RCA lacks standing, HITN generally alleges that the requests set forth in RCA's petition are contrary to the public interest, without any explanation of

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<sup>3</sup> HITN Opposition at 12.

<sup>4</sup> RCA's petition provided a thorough and well supported analysis of why RCA should be granted party status with standing to file its petition. See RCA's "Petition to Deny" ("Petition") at 1-6.

why it reaches that conclusion.<sup>5</sup> To the contrary, the matters RCA has presented for review bear directly upon the public's ability to make use of the 2.5 GHz spectrum that would be under the control of New Clearwire on a near-nationwide basis. First, as the Petition explains, unless New Clearwire is required to make its 2.5 GHz spectrum available to the customers of other wireless carriers when there is technical compatibility, public access to the spectrum will be unreasonably limited. Interoperability and automatic roaming agreements between carriers are extremely important relationships to afford public access to wireless networks when users leave their home carriers' service areas. It will directly benefit the public if a subscriber to a carrier other than New Clearwire or Sprint can make use of the 2.5 GHz network of New Clearwire and billing and service arrangements have been agreed upon in advance by the carriers involved.

Second, it will benefit the public if the devices that Sprint and New Clearwire offer for use of the 2.5 GHz spectrum are available from other sources. RCA will address that point in the following section of this Reply.

## **II. Response to the Sprint Clearwire Opposition**

Applicants attempt to characterize the RCA Petition as one that requests unnecessary conditions upon grant of the applications. At the same time, Sprint does not deny an intention to integrate its offering of Commercial Mobile Radio Service ("CMRS") with the planned broadband services of its affiliate, New Clearwire. It is easily foreseeable that Sprint will bring to the market a mobile handset that is capable of using both Sprint's CMRS spectrum and the BRS spectrum of its affiliate. The package of services offered through the same device by Sprint, a CMRS licensee, will be functionally the same as the services offered by other CMRS carriers that have available only CMRS spectrum for voice and data services.

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<sup>5</sup> HITN Opposition at 12.

RCA requests the Commission, if it decides to grant the Sprint-Clearwire applications, to condition the grant on a requirement that Sprint negotiate with other carriers and enter into agreements for interoperability, including automatic roaming, on reasonable terms and conditions when a reasonable request is received from another CMRS carrier. At a minimum, the Commission should make note of the pending further rulemaking proceeding in which the Commission is considering whether the roaming obligation should be extended to non-interconnected services or features or to services that are not CMRS,<sup>6</sup> and state that Sprint will be obligated to comply with rules adopted in that proceeding regardless of whether the spectrum Sprint utilizes for its service offerings are licensed to Sprint or to an affiliate of Sprint such as New Clearwire. The Commission should not wait for a marketplace failure to recognize the potential harm to consumers if Sprint is permitted to avoid regulations applicable to other CMRS carriers simply by integrating its service offering with an affiliate's 2.5 GHz spectrum.

The problems arising from exclusive handset agreements between large CMRS carriers and handset vendors have not been addressed by the Commission as of this date.<sup>7</sup> Taking Applicants at their word that "New Clearwire's business model depends upon *encouraging* the proliferation of WiMAX devices and operations as a means of achieving the economies of scale necessary to produce highly affordable WiMAX chipsets,"<sup>8</sup> Applicants should not object to a condition that allows the public to purchase all compatible handsets from sources other than Sprint and its affiliates. If Sprint is permitted to control the availability and the quality of the handsets that are interoperable on CMRS and 2.5 GHz spectrum, the public will not be afforded

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<sup>6</sup> See, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

<sup>7</sup> RCA presented the issue to the Commission in its *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed May 20, 2008 ("Handset Petition"). As of the filing of this Reply the Commission has taken no action on the Handset Petition.

<sup>8</sup> Sprint Clearwire Opposition at 16-17.

access to the range of services that Sprint offers except through purchase of the equipment and services from Sprint or its affiliates.

### **III. Conclusion**

The proposal before the Commission seeks approval for a watershed event that would allow a single company, which is affiliated with a CMRS carrier, to obtain by license virtually all of the 2.5 GHz BRS spectrum and, by lease, much of the available EBS spectrum. The amount of spectrum New Clearwire would hold, and Sprint would have immediately accessible, is enormous. At the same time it is highly questionable that the Sprint family of companies will be able to make use of even half of the spectrum it would control in the span of the next 10-20 years. Unless the Commission acts now to promote access to the spectrum by subscribers of other wireless carriers, competition among the surviving CMRS carriers will be hindered and the public will be denied efficient access to a vast amount of spectrum.

RCA urges the Commission either to deny the applications or to condition their grant upon measures that will encourage interoperability between wireless systems, automatic roaming for customers of other carriers, and access to handsets whose distribution otherwise will be tied up under exclusive agreements.

Respectfully submitted,

**RURAL CELLULAR ASSOCIATION**

*[filed electronically]*

By: David L. Nace  
*Its Attorney*

LUKAS, NACE, GUTIERREZ & SACHS, CHARTERED  
1650 Tysons Boulevard, Suite 1500  
McLean, Virginia 22102  
(703) 584-8661  
August 11, 2008

## CERTIFICATE OF SERVICE

I, David L. Nace, hereby certify that on this 11<sup>th</sup> day of August, 2008, copies of the foregoing REPLY TO OPPOSITIONS were e-mailed, in pdf format, to:

Best Copy and Printing, Inc.  
[FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM)

B. Lynn F. Ratnavale  
Broadband Division  
Wireless Telecommunications Bureau  
[Lynn.ratnavale@fcc.gov](mailto:Lynn.ratnavale@fcc.gov)

Susan Singer  
Spectrum and Competition Policy Division  
Wireless Telecommunications Bureau  
[Susan.singer@fcc.gov](mailto:Susan.singer@fcc.gov)

Neil Dellar  
Office of General Counsel  
[Neil.dellar@fcc.gov](mailto:Neil.dellar@fcc.gov)

Gloria Conway  
Media Bureau  
[Gloria.conway@fcc.gov](mailto:Gloria.conway@fcc.gov)

Copies of the foregoing REPLY TO OPPOSITIONS were sent by first class United States mail, postage prepaid, to the following:

Lawrence R. Krevor  
Vice President  
Government Affairs – Spectrum  
Sprint Nextel Corporation  
2001 Edmund Halley Drive  
Reston, VA 20191

Trey Hanbury  
Director, Government Affairs  
Sprint Nextel Corporation  
2001 Edmund Halley Drive  
Reston, VA 20191

Regina M. Keeney  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K Street, N.W., Suite 802  
Washington, DC 20006

Charles W. Logan  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K Street, N.W., Suite 802  
Washington, DC 20006

Stephen J. Berman  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K Street, N.W., Suite 802  
Washington, DC 20006

A. Renée Callahan  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K Street, N.W., Suite 802  
Washington, DC 20006

Terri B. Natoli  
Vice President, Regulatory Affairs and  
Public Policy  
Clearwire Corporation  
815 Connecticut Avenue, N.W., Suite 610  
Washington, DC 20036

Nadja S. Sodos-Wallace  
Regulatory Counsel, Assistant Secretary  
Clearwire Corporation  
815 Connecticut Avenue, N.W., Suite 610  
Washington, DC 20036

Erin Boone  
Corporate Counsel, Regulatory Affairs  
Clearwire Corporation  
815 Connecticut Avenue, N.W., Suite 610  
Washington, DC 20036

Howard J. Symons  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Avenue, N.W., Suite 900  
Washington, DC 20004

Russell H. Fox  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Avenue, N.W., Suite 900  
Washington, DC 20004

Stephanie A. Zalewski  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Avenue, N.W., Suite 900  
Washington, DC 20004

Rudolph J. Geist  
RJGLaw LLC  
7910 Woodmont Avenue, Suite 1400  
Bethesda, MD 20814

Eric E. Menge  
RJGLaw LLC  
7910 Woodmont Avenue, Suite 1400  
Bethesda, MD 20814

Clare C. Liedquist  
RJGLaw LLC  
7910 Woodmont Avenue, Suite 1400  
Bethesda, MD 20814

*[filed electronically]*

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David L. Nace